

No. 11555
IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

PAUL J. ZIEGLER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME II

(Pages 331 to 652, Inclusive)

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

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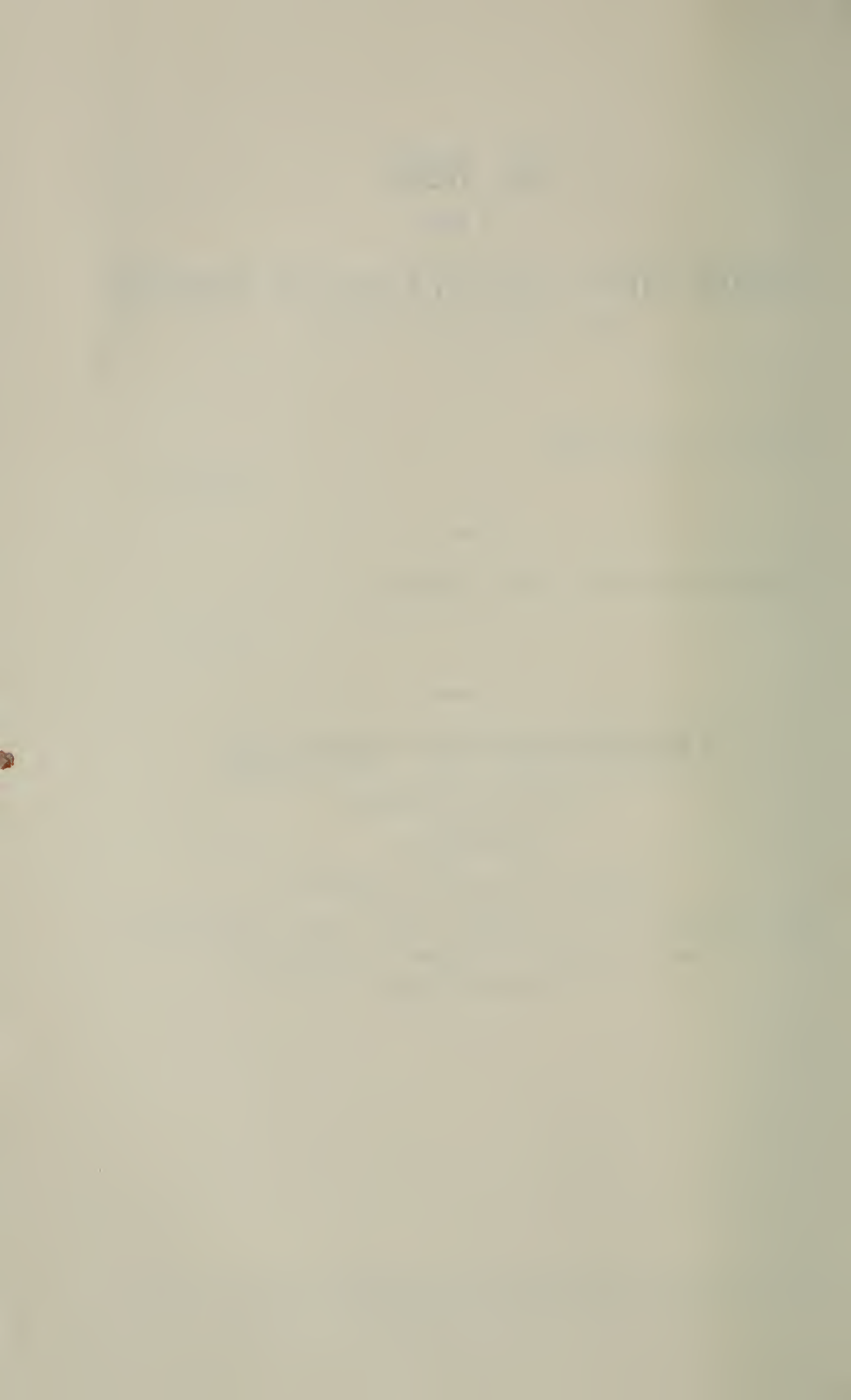
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The evidence will show—and it already has, I think—that the actual delivery to the warehouse was the delivery of the sugar, not the mere transfer of the sugar after from the warehouse to the plant;

That at the time he talked to the brokers there was some question in their mind about this telegram.

Mr. Ziegler will get on the stand and frankly admit the conversations he had with the brokers and that one of the brokers did read that telegram to him;

That after listening to the telegram, he had the broker re-read it to him.

Mr. Ziegler being a lawyer tried to analyze it and concluded in substance, How could there be a rationing program, as the telegram stated, if there was no OPA? And if the OPA was dead, how could there be a rationing program? He will explain that on the stand.

He acquired this sugar not for the purpose of black marketing, or anything of that kind, but to maintain a business enterprise. At the time he felt he was absolutely entitled to the sugar.

Insofar as giving the check was concerned, when he gave the check, he was giving nothing more than a piece of paper. Just because some broker thought there should be a ration check [239] did not convince Mr. Ziegler that he should have to give a ration check;

That he actually gave the checks, Exhibits, I believe they are, 3, 4, 5 and 6, and that at the time he gave them they were signed "Paul J. Ziegler," and one none of them—mind you, none of them—did the words "West Coast Supply Company" appear;

That thereafter, at least in one case, one of the brokers called up and said something about the check not having "West Coast Supply Company" on it, and they had a dis-

cussion again about OPA. The broker said, "Why, you don't have an account." Paul Ziegler said, "True. So what!"

And the broker said, "Well, I should put on 'West Coast Supply Company.'"

And Mr. Ziegler said, "You do as you like about it. I think I am doing what is right. You do as you like."

So the brokers in each case took it upon themselves because the ration order provides you cannot transfer a check unless it is on the account of a depositor, a ration depositor; took it upon themselves to write in "West Coast Supply Company."

We expect to prove that at that particular period of time—July 1, 1946—at least we will attempt to prove—that the emergency concerning sugar no longer existed and that there was no shortage, in fact, of sugar.

For the purpose of showing his intent, his mental condition, he had in mind those various acts, to-wit, the Congressional work on the expiration of the Act, the veto of the President and the condition of the country, or at least locally, and the nation at large, in fact, with respect to the shortage of sugar;

That he did not willfully intend to violate any law. He merely went out as a citizen to try to get sugar to maintain a reasonably small plant.

That, in general, I believe, is what we expect to prove.

If I may just have one second to consult with my client.

(Brief pause in the proceedings.)

I believe that concludes my opening statement. I perhaps will be like everyone: I will think of something after I sit down. But that is all at this time.

The Court: All right.

Mr. Carr: Mr. Ziegler.

PAUL J. ZIEGLER,

one of the defendants herein, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Paul J. Ziegler. [341]

Direct Examination.

By Mr. Carr:

Q. You are one of the defendants in this case, Mr. Ziegler? A. I am.

Q. What is your business or occupation?

A. I am in the manufacturing business manufacturing jams, jellies, doughnut flour, flavors, extracts, glazed fruit.

Q. Now, Mr. Ziegler, try to speak a little louder.

I might say, your Honor, this is not done for any sympathy. Mr. Ziegler is suffering with a very bad cold.

I hope, Mr. Ziegler, you will make an effort to keep your voice up.

What other supplies, generally, did you say? Bakery supplies?

A. Generally bakery supplies; all of these items are manufactured for commercial bakers.

Q. What is the name of your company?

A. John H. Ziegler Company.

Q. What is that? A corporation or a partnership?

A. It is a partnership of my father and myself.

Q. How long has it been in existence?

A. Since February 1, 1944.

Q. By the way, you are a lawyer, too, Mr. Ziegler?

A. I am.

(Testimony of Paul J. Ziegler)

Q. And you are admitted to the bar? [342]

A. I am admitted to the bar and have been practicing since 1925.

Q. You have practiced in Los Angeles?

A. Yes, sir.

Q. Do you have an office here? A. I do.

Q. Have you stopped practice?

A. Yes. I am inactive and have been for the last three years.

Q. When did you become inactive in the practice?

A. Well, progressively starting with February, 1943.

Q. What did you do at that time?

A. At that time I went down to the place of business of my father and brothers.

Q. What was the name of that business?

A. The West Coast Supply Company.

Q. Can you state who the partners of that business were at that time?

A. Then and now they are John H. Ziegler, who is my father, Allen S. Ziegler and Raymond N. Ziegler, who are my brothers.

Q. At that time the John H. Ziegler Company was not in existence, was it? A. It was not.

Q. What, if anything, generally did you do at that [343] time respecting the partnership, West Coast Supply Company? Did you work for them or represent them legally or what, if anything?

A. Well, my brother, Allen S. Ziegler, had then just gone into the Navy; and I went down there and devoted my time to the business to try to do what I could for it during his absence.

(Testimony of Paul J. Ziegler)

Q. You did not, as I understand, become a partner?

A. No, neither then or at any time.

Q. What particular phase of activity did you undertake at that time? That is '43, as I understand it?

A. Yes. Well, to begin with and for sometime thereafter I devoted myself very largely to the numerous governmental regulations which were then going into effect with respect to the operation of that and other businesses: the WPB and the OPA and the half dozen other alphabetical agencies which had issued various regulations governing the operation of any business.

Q. Did you actually participate in any managerial capacity in the business at that time? A. No.

Q. Directing your attention to about 1944, about February, was there some change in the business setup there?

A. Yes.

Q. Just in a very brief way tell us what that separation [344] or change was.

A. The partnership of West Coast Supply Company, which was a partnership of my father and two brothers, continued as before; but the manufacturing operations of the West Coast Supply Company were severed from the West Coast Supply Company and were taken over exclusively by my father to begin with. And immediately thereafter, that is, for all practical purposes, at the same time my father and I formed a partnership to carry on that manufacturing business which had formerly been conducted by the West Coast Supply Company.

Q. Incidentally, how many employees did you employ at the John H. Ziegler Company in, oh, June and July of 1946? Approximately how many employees?

A. In the neighborhood of 20.

(Testimony of Paul J. Ziegler)

Q. Do you know how many the West Coast Supply Company had as employees?

A. At that time I should say about 30.

Q. While we are on that subject, Mr. Ziegler, in July of 1946 what generally were your sugar requirements?

I am speaking now with reference to your company, the John H. Ziegler Company.

A. I would have to add them up mentally, if you like, or describe them generally with respect to the machines.

Q. Just approximately.

A. It would require about one hundred twenty five [345] 100-pound bags of sugar—that is 12,500 pounds of sugar—per day to operate the flour blending operation. It would require about 350 sacks, that is, 35,000 pounds per day to operate the jam, jelly and other kindred operations.

Q. Did the John H. Ziegler Company have a quota, sugar quota? A. No.

Q. Can you state why they did not have a quota?

A. Because under the OPA regulations with respect to sugar, no sugar was allowed for manufacturing purposes except on the basis of a percentage of use in 1941. John H. Ziegler Company had not been in business. I had not been in business in 1941.

Q. John H. Ziegler began business in 1944, is that right? A. Yes.

Q. About what month, if you recall?

A. February 1st. May I correct an answer?

The Court: Yes.

Mr. Carr: Yes, indeed.

The Witness: I said that the OPA did not provide for a sugar base for any manufacturer except one who

(Testimony of Paul J. Ziegler)

was in business in 1941. I should correct that. They did provide a sugar base for a manufacturer of jams and jellies who had been in business in 1944. [346]

Mr. Carr: I will ask that this be marked, your Honor. This is the original partnership agreement. I wonder if we might substitute a photostatic copy?

The Court: Yes.

The Clerk: Defendants' Exhibit C for identification.

(The document referred to was marked Defendants' Exhibit No. C for identification.)

Mr. Carr: I will also ask that this letter, agreement, be marked next for identification.

The Clerk: Defendants' Exhibit D for identification.

(The document referred to was marked Defendants' Exhibit No. D for identification.)

Q. By Mr. Carr: Mr. Ziegler, with reference to the conduct of the business there—West Coast Supply Company and the John H. Ziegler Company—do they have separate quarters? Or just what is the physical arrangement generally? You don't have to get into great detail.

A. Generally they are separated. The John H. Ziegler Company occupies generally frame buildings on a lot, what would probably be 1658 to 1662 Long Beach Avenue and in which the John H. Ziegler Company has its office and its factory.

The West Coast Supply Company generally occupies a brick building at 1654 Long Beach Avenue.

Q. Do you or do you not keep identical bank accounts, that is, confuse your bank accounts, your company with the [347] West Coast Supply Company?

(Testimony of Paul J. Ziegler)

A. By no means. They are separate bank accounts. The West Coast Supply Company has its own account or accounts in which I have no interest and cannot draw out of. The John H. Ziegler Company has its own bank account from which no one but myself and my father can draw.

Q. Incidentally, in making partnership income tax returns have you made returns for the John H. Ziegler Company yourself? A. Yes, of course.

Q. Do they show that as a separate concern?

Mr. Strong: Objected to. I think the returns are the best evidence.

Mr. Carr: All right, counsel, after I have let so many documents in.

Mr. Strong: I don't think that comment is necessary, your Honor. I have a right to object.

Mr. Carr: That's all right.

Q. I show you here what purports to be a partnership agreement, designated Defendants' Exhibit No. 6 for identification. Will you please—

The Court: Defendants' what?

Mr. Carr: Yes, your Honor.

The Court: No, it cannot be.

Mr. Carr: I am sorry. It looked like a "6." [348]

The Court: The numerals are for the Government and the letters for the defendant.

Q. By Mr. Carr: Are you acquainted with that document? A. Yes, I drew it.

Q. You drew the document? A. Yes.

Q. State whether or not you saw it signed?

A. I did.

(Testimony of Paul J. Ziegler)

Mr. Carr: I will offer this in evidence with the permission of the court to substitute a photostatic copy of it.

Mr. Strong: No objection.

The Court: In evidence.

The Clerk: Defendants' Exhibit C in evidence.

(The document referred to was marked Defendants' Exhibit C and introduced in evidence.)

Q. By Mr. Carr: I show you now Defendants' Exhibit D for identification which purports to be a letter agreement concerning the partnership.

Are you acquainted with that document?

A. I am.

Q. Who prepared it? A. I did.

Q. Did you see it executed? A. I did.

Mr. Carr: I will offer in evidence this document with the same request, your Honor, to substitute a photostatic copy. [349]

Mr. Strong: No objection.

The Court: What is the date of Exhibit C?

The Clerk: The partnership agreement, your Honor?

The Court: Yes.

The Clerk: It is dated the first day of January, 1939.

The Court: And the date of the letter?

The Clerk: The date of the letter, your Honor, is January 29, 1944.

The Court: All right.

The Clerk: Defendants' Exhibit D in evidence.

The Court: Exhibits C and D in evidence.

(The document referred to was marked Defendants' Exhibit No. D and introduced in evidence.)

(Testimony of Paul J. Ziegler)

Q. By Mr. Carr: Now, Mr. Ziegler, I pass you Government's Exhibits, and I will take them one at a time.

Here is Government's Exhibit No. 3, which is the check for 80,000 pounds of sugar made out to the C & H Sugar Company. Have you ever seen that before?

A. I have.

Q. Is that your signature? A. It is.

Q. When you signed that check did it have on it "West Coast Supply Company"? A. It did not.

Q. When did you first learn of its having "West Coast [350] Supply Company" on it, as far as you can remember?

A. Well, the first knowledge of its having "West Coast Supply Company" on it was when it was presented here in the court room.

Q. You had never seen it after the time you had signed it "Paul J. Ziegler"?

A. I had not seen the check after the time I signed the check, having filled it out completely, except for this "West Coast Supply Company," until it was presented here in the court room.

Q. Did you yourself deliver the check to anyone?

A. This check was transmitted by mail to Sims-Thompson Company who are the brokers for C & H Sugar Company.

Q. I show you Government's Exhibit 4, which is the check for 660,000 pounds of sugar, made out to the Holly Sugar Company.

Is that your signature? A. It is.

Q. About the "West Coast Supply Co." typed on there: did you put that on there? A. I did not.

(Testimony of Paul J. Ziegler)

Q. Did you have any conversation with someone about putting that on there? A. Yes.

Q. With whom? [351] A. With Jim Barry.

Q. Did you call Mr. Barry, or did he call you?

A. He called me.

Q. Give us the substance of that conversation, as nearly as you can recall it.

A. Jim Barry called me on the telephone toward the end of the week of July 1, 1946, and said that he had just returned or that he had returned within a day or two and that he had found this check.

He said, "The check does not carry the name of the account on it."

I said, "So what?"

He said, "Well, it should have an account name on it, shouldn't it?" I said, "Not so far as I am concerned it shouldn't."

He said, "Well, I think it ought to have some name on it, and I think it ought to have the West Coast Supply Company's name on it."

I said, "Well, that is up to you. I am certainly not going to put anything on it."

Q. Had you previously had a conversation with him relative to the purchase of this sugar? A. Yes.

Q. I will come back to that in a moment.

I show you Government's Exhibit 5, which is a check for [352] 30,000 pounds of sugar from the Spreckels Sugar Company.

Is that your signature? A. It is.

Q. How about that which appears up over the signature: "West Coast Supply Co." in ink? Did you write that in there? A. I did not.

(Testimony of Paul J. Ziegler)

Q. Did you ever have any conversation with anyone about that being put in there?

A. I had a conversation with respect to its not having been put in there at the time the check was delivered.

Q. With whom did you talk?

A. To Mel Williamson.

Q. Did he call you, or did you call him?

A. I believe he called me.

Q. You mean on the telephone, do you?

A. Yes.

Q. You had a conversation with him respecting that fact that "West Coast Supply Co." did not appear on the check?

A. Yes.

Q. Suppose you give us that conversation as near as you can recall it.

A. He called me sometime during the week of July 1st and told me that this check which I had sent to him did not carry the account name on it.

I said to him, "Well, what about it?" [353]

He said he thought it ought to have an account name on it.

I said, "I don't think so." I didn't think it ought to have anything on it.

Q. Is that the conversation?

A. That is about the whole of it.

Q. I show you Government's Exhibit No. 6, which is a check for 600,000 pounds of sugar made out to the Union Sugar Company and ask you: is that your signature?

A. It is.

Q. I notice it has "West Coast Supply Company" above it. Did you put that on there?

A. I did not.

(Testimony of Paul J. Ziegler)

Q. Do you know who did? A. No, I don't.

Q. Did you have any conversation with anyone about that going on the check? A. I did.

Q. With whom? A. Mr. Al Leland.

Q. Did he call you, or did you call him?

A. He called me.

Q. Can you give us the approximate date, Mr. Ziegler?

A. I couldn't be too sure of the date of the conversation because I had several conversations with him by telephone [354] during the two weeks after July 1st. So I think I can only say that it was sometime within the two weeks after the first of July.

Q. State the conversation between you and Mr. Leland respecting Government's Exhibit No. 6.

A. He said, "The check I got from you the other day, you didn't put the West Coast Supply Company name on it."

I said, "I know it, Al. What of it?"

He said, "Well, shouldn't it be on there?"

I said, "Not so far as I am concerned it shouldn't be on there."

He said, "Well, I don't know what the boys in San Francisco are going to think about that."

I said, "I don't care what they think about it."

He said, "Well, how about my putting it on there?"

I said, "Not on my account you don't. I can't prevent you from putting it on there, but I don't think it's necessary. You asked for a check. You got what you consider a check. What more do you want?"

Q. Now—excuse me.

A. I recall one further part of the conversation.

(Testimony of Paul J. Ziegler)

He said, "Well, if that is the way you feel about it, I will just send it up to San Francisco the way it is."

Q. Now, respecting all four of these exhibits—I am referring specifically to Government's Exhibits 3, 4, 5 and [355] 6—on which appear, except for Exhibit 5, the typewritten words "West Coast Supply"—no, I had better refer to each one.

On Exhibit 3 it is "West Coast Supply Company" typed in. On Exhibit 4 it is "West Coast Supply Co." typed in. On Exhibit 5 it is "West Coast Supply Co." in pen and ink. And on Exhibit 6 it is typed in "West Coast Supply Company."

Do I understand you to say that where the name "West Coast Supply Co." or "West Coast Supply Company" appears, either in typing or in ink, that you yourself never put those on there?

A. That is correct. And with respect to each of these checks, all of the handwriting, except the "West Coast Supply Co." is my handwriting.

Q. To which check are you referring?

A. All of them. Each of these checks is entirely in my handwriting, except the "West Coast Supply Co."

Q. Incidentally, what is the business relationship generally? Does John H. Ziegler Company have any business relation with the West Coast Supply Company?

A. Yes. We sell them merchandise.

Q. You sell them as what? A wholesaler or manufacturer or in what capacity?

A. I manufacture articles which I sell to them and which they in turn re-sell to others as a wholesaler. [356]

(Testimony of Paul J. Ziegler)

Q. West Coast Supply Company distributes other materials aside from what you manufacture, do they?

A. Oh, yes, a wide variety.

Q. Now, I want to take your mind back to the period during June of 1946, Mr. Ziegler, at the time the OPA bill was up for extension in Congress.

What, if anything, did you do toward keeping that situation in minds

A. During both May and June I followed very closely through the newspapers and over the radio what was being done or not being done in Congress as to the extension of the OPA, and during that—

Q. Excuse me.

A. During that time I consulted and conferred with sugar brokers, in particular with Jim Barry of Parrott and Company and with Leland of Schmiedell & Mailliard as to delivery of sugar as soon as and if OPA went out of existence.

Q. Did you have any conversation with any of those gentlemen respecting whether or not the OPA act would or would not be alive on July 1st or any other day?

A. I had two or three conversations with either of them prior to July 1st as to what they could do with respect to delivery of sugar if the OPA died on June 30th, which it did.

Q. Did you attempt to buy sugar from these brokers [357] during June, 1946?

A. I couldn't answer that, Mr. Carr. I couldn't tell without—

Q. Did you buy any sugar from them in June, 1946?

A. I couldn't tell you without referring to my records whether I did or not.

(Testimony of Paul J. Ziegler)

Q. Well, I will get it in this way:

Did you have any conversation with Mr. Barry, for example, respecting the possibility of buying sugar in case the OPA died? A. Yes.

Q. When? When would you place the first conversation, if you recall?

A. I should say about the middle of May.

Q. Where did that occur, if you remember?

A. I think the first one of those conversations occurred in my factory at 1662 Long Beach Avenue.

Q. Was the conversation between you and Mr. Barry?

A. Yes.

Q. Will you please give us the conversation?

A. I said, "Jim, from the newspapers and from the radio there is a possibility that they may not get together on the extension of the OPA before it expires which is presently set for the 30th of June. There is a strong possibility that there may be no OPA. If there isn't, I want to [358] be in a position to get deliveries on sugar in substantial quantities. And I want to know from you whether I can depend upon your ability to deliver should that event occur, that is, should the OPA go out of existence."

Q. Did he indicate to you whether or not he would have an available supply or did have an available supply of sugar?

A. He said that he, or rather his principal, the Holly Sugar Company, was loaded with sugar; that they had more sugar than they knew what to do with. Their warehouses were bulging with it and that he would be delighted to ship me all the sugar that I cared to buy.

(Testimony of Paul J. Ziegler)

Q. Now, did you have any later conversation with Mr. Barry about the prospect of buying sugar in case the OPA should not be extended?

A. I called him on the telephone along about the middle of June, and at that time told him over the telephone that it looked to me like there was a strong possibility that the OPA was not going to be renewed; that the way the thing was shaping up that there was a pronounced probability that the OPA would go out of existence and that I was, therefore, very intent upon being able to get shipment on sugar just as soon as that should occur.

I asked—I arranged then with him—pardon me. I will withdraw that.

I asked him how I could get in touch with him on June [359] 28th, and he told me that he probably would be out of town on June 28th but that his office could take care of it if the eventuality arose.

Q. Why June 28th?

A. Because that was the last business day before June 30th which was the day that the OPA would expire, and it was the last business day that I could give an order for sugar to be delivered on the 1st of July.

Q. Did you have any conversations generally with any other brokers along the same lines?

A. With Al Leland.

Q. With Al Leland? A. Yes.

Q. When was your first conversation with Mr. Leland?

A. I should say about the first week of May.

Q. Was that with reference to obtaining sugar in case the OPA was not extended? A. Yes.

(Testimony of Paul J. Ziegler)

Q. Who was present?

A. The first conversation, I believe, was at the factory and only Mr. Leland and myself were present.

I told Mr. Leland that it looked to me like there was a possibility that the OPA might be dead on the 30th of June; that there was so much smoke with respect to the extension of the OPA in Congress that there was a possibility that the [360] Act might not be renewed and that if that event should come to pass I wanted to get delivery on sugar in substantial quantities and I wanted to know from him whether he would have substantial quantities of sugar for immediately delivery if the OPA Act was not renewed.

Q. Well, now, generally, without giving the conversations, did you have a few or many or several conversations along that line with various brokers during the period of May and June of 1946?

A. No. The only brokers I talked to were Mr. Barry and Mr. Leland, and I had, in addition to this conversation which I have just given you in part, two other conversations with Mr. Leland on the same subject.

Q. At any rate, as I understand you, during that period you were out definitely trying to establish connections or locate places where you could purchase substantial amounts of sugar in case OPA was not extended?

A. I was making sure that I would be able to get delivery on sugar in substantial quantities and that the sugar would be available for me to get delivery on in substantial quantities.

I was assured by both of these brokers that they could and would deliver all of the sugar that I could possibly imagine.

(Testimony of Paul J. Ziegler)

Q. All right. Did you learn of the veto of the [361] President on June 29, 1946, of the OPA? A. Yes.

Q. The extension bill? A. Yes.

Q. I believe that was on a Saturday, was it not?

A. Yes, Saturday afternoon.

Q. What, if anything, did you do then respecting acquiring sugar?

A. On that day, nothing. It was Saturday afternoon and all businesses were closed, I mean businesses of this character.

Q. Did it come to your attention that the President made a speech on Sunday, June 30th, in which he explained the veto of the OPA bill?

A. Yes. I listened to the broadcast.

Q. What was the first thing you did on Monday morning, the morning after that speech, that is, in a business way?

A. Picked up the phone and started to buy sugar.

Q. Do you recall the order in which you made these purchases?

Directing your attention to Exhibits 3 through 6, inclusive—these are the four checks—do you recall the order in which you made those purchases?

A. Well, to the best of my recollection, the Union Sugar was the first that I telephoned to.

Q. What is the number of that exhibit? [362]

A. This would be Exhibit 6. The Holly Sugar, the second, is Exhibit 4.

Q. Let me get that again. The first was exhibit what? 6? A. Yes.

Q. That was to whom? Which check is that?

A. That is Union Sugar.

(Testimony of Paul J. Ziegler)

Q. Union Sugar. And Exhibit 4 was to whom?

A. Holly Sugar.

Q. Holly Sugar.

A. And frankly I don't know, don't remember, which one of these two, that is, C & H Sugar Corporation or Spreckels Sugar Company I called next.

The Court: What are those two exhibit numbers that you do not recall?

The Witness: One is Exhibit 5. That pertains to Spreckels Sugar Company. And the other is Exhibit 3. That pertains to the C & H Sugar Corporation.

The Court: All right.

Mr. Carr: Before I take that up again, I do not know that it is necessary to mark the Federal Register as an exhibit. I think it is an official document. It probably can be treated as any law book. I am going to call his attention to Executive Order 9745.

The Court: All right. [363]

Q. By Mr. Carr: I show you here a copy of the Federal Register, dated Tuesday, July 2, 1946, which contains Executive Order 9745 providing for the interim administration of certain continuing functions of the Office of Price Administration. I note the Register shows here "F. R. Doc. 46-11585; Filed, July 1, 1946; 10:32 a. m."

That would mean, you will agree, 10:32 a. m. Washington, D. C., time, eastern standard time.

Mr. Strong: I assume so, your Honor.

Q. By Mr. Carr: Mr. Ziegler, when was the first time that you read that executive order, as near as you can remember?

(Testimony of Paul J. Ziegler)

A. Sometime toward the end of July, the first of August.

Q. When did you first know or hear of such an executive order?

Mr. Strong: May I object, your Honor? I do not think it makes any difference whether he ever heard of it. The law is the law whether he heard of it or not.

The Court: I shall permit the question.

Mr. Carr: May I right here get that cleared up?

The Court: Well, I have allowed it. What is the argument about?

Mr. Carr: I don't think the jury ought to have that impression left with them at all, your Honor.

The Court: That is an argument. That is an argument, I think, for the jury. [364]

Mr. Carr: Very well, sir.

The Witness: At about the time I read it, which was toward the latter part of July or the first of August—

Q. By Mr. Carr: Did you obtain the executive order yourself? A. I did not.

Q. How did you get hold of it?

A. Well, I never did obtain it or get hold of it, Mr. Carr. I got access to the copy which you have there before you in your office.

Mr. Carr: I think probably I will have this marked as an exhibit. I may want to offer it in evidence, your Honor.

The Court: Mark it as an exhibit.

Mr. Strong: For identification, your Honor?

The Court: Yes.

Mr. Carr: Yes.

(Testimony of Paul J. Ziegler)

The Clerk: That will be Defendants' Exhibit E for identification.

(The document referred to was marked Defendants' Exhibit E for identification.)

Mr. Carr: I assume counsel will require me to prove that I personally got it from the United States Attorney?

Mr. Strong: I haven't the slightest idea where you got it.

Mr. Carr: If I make the assertion, will you accept that? [365]

Mr. Strong: Yes, anything you say.

Mr. Carr: Because if I have to testify, your Honor, it will invoke the rule of whether or not I can argue the case.

Mr. Strong: That will not be necessary, your Honor.

Q. By Mr. Carr: First let me ask you: To the best of your knowledge, when did you first hear that such an executive order as 9745 existed?

A. Toward the end of July or the first of August of 1946 after you got that copy which you have there before me. Up to that time I didn't know of any executive order of any kind.

Q. After you got the copy of Executive Order 9745, what, if anything, did you do respecting that executive order?

A. Asked you what it meant.

Q. And at that particular time was I representing you?

A. You were.

Q. You were consulting me as an attorney and lawyer?

A. Yes.

Q. At that particular time what advice did I give you?

(Testimony of Paul J. Ziegler)

Mr. Strong: I do not think that is material, your Honor. I object to the question. This is after July 1st.

Mr. Carr: Well, that is true. It may be that that question is after the event. But if that is the case, then I want counsel to stipulate with me that the dates in the information, which run up into August, are not correct [366]

Mr. Strong: I make no such stipulation. I do not even understand the request.

Mr. Carr: Well, the information charges, if you will note, your Honor, in Count Two:

"From on or about July 3, 1946, to on or about August 17, 1946. . ."

Mr. Strong: I think maybe it would save time if I just withdraw my objection, your Honor. I will withdraw it.

(Question read by the reporter.)

Q. By Mr. Carr: Respecting this particular executive order?

A. You told me that you could not understand what it meant and that it was impossible to determine what it was as a law or regulation, what effect it had.

Mr. Carr: At this time I should like to offer in evidence the Federal Register, if counsel accepts my statement that I obtained it from the United States Attorney. I should like to offer it in evidence, your Honor.

Mr. Strong: I don't think we need the document in evidence. I will stipulate that Mr. Carr got a copy of the Federal Register, which contains this executive order, on whatever date Mr. Carr says he got it.

Mr. Carr: All right. Will you stipulate it arrived in the United States Attorney's office on July 9, 1946?

(Testimony of Paul J. Ziegler)

Mr. Strong: And you say you got it after that? [368]

Mr. Carr: Yes.

Mr. Strong: I will so stipulate. As to this copy?

Mr. Carr: Yes, as to this copy.

The Court: The record will show when Mr. Carr received it.

Mr. Carr: I received it, your Honor, sometime shortly after July 9, 1946. What day I cannot say.

The Court: All right.

Q. By Mr. Carr: Can you state, Mr. Ziegler, at this time or can you pick a date and say July 10th, 12th, 15th, that all of this sugar had been paid for by that time?

A. Yes.

Q. What date? A. July 12th.

Q. 1946? A. Yes.

Q. When I am referring to sugar I mean the sugar that we are speaking now with reference to, the 600,000 pounds purchased from the Union Sugar Company, purchased from the Holly Sugar Company 660,000 pounds and from the Spreckels Sugar Company 30,000 pounds and from the C & H Sugar Corporation 80,000 pounds.

Do you mean that all of that sugar had been paid for on July 12th?

Mr. Strong: That is objected to. I think if there are any records or checks, they are the best evidence. [369]

The Court: Yes, I think so. Are they not, Mr. Carr? But why insist on that? If they were paid for, they were paid for.

Mr. Strong: I would like to see them.

Mr. Carr: I think a witness can testify when he bought an automobile. You don't have to show the sales receipt.

(Testimony of Paul J. Ziegler)

The Court: Do you not think it would be necessary to lay a foundation?

Q. By Mr. Carr: Well, who paid for the sugar?

A. I did, that is, the John H. Ziegler Company did.

Mr. Strong: I object to that, your Honor. I would like to see the check.

The Court: With that objection, of course I shall have to sustain it. You ought to be able to produce it.

Mr. Carr: Is your Honor ruling that I have to produce the check?

The Court: On that objection, yes.

Mr. Carr: I will stand on that.

Q. Now, who paid for the sugar, do you know?

A. Yes, I do.

Q. Who? A. I did.

Q. Can you tell me, Mr. Ziegler, what check would be the last check so that I may get it out of your papers over here, the last check given to pay for this sugar? [370]

A. It is the check which is dated July 12th.

Q. To whom, do you know?

A. No, I don't. But if you will hand me the papers I can give it to you in a moment.

Mr. Carr: I will ask that this be marked as exhibit next in order.

The Clerk: That will be Defendants' Exhibit F for identification.

(The document referred to was marked Defendants' Exhibit No. F for identification.)

Q. By Mr. Carr: I show you Defendants' Exhibit F for identification. Can you identify that check?

A. Yes.

Q. Is that your signature? A. It is.

(Testimony of Paul J. Ziegler)

Q. I note it has printed on it "John H. Ziegler Co."?

A. Yes.

Q. Did you sign that yourself?

A. What? The "John H. Ziegler Co."?

Q. Oh, no. Is that your name written on there?

A. Yes, that is my signature "Paul J. Ziegler."

Q. And this check was issued to the Union Sugar Company? A. Yes.

Q. In payment for what?

A. In payment for 6,000 sacks, 600,000 pounds, of sugar. [371]

Mr. Carr: I will offer this in evidence.

Mr. Strong: No objection.

The Witness: Mr. Carr, a photostatic copy—

Mr. Carr: Could we put in a photostatic copy?

The Court: Yes.

Mr. Carr: May I pass this to the jury?

The Clerk: Defendants' Exhibit F in evidence.

(The document referred to was marked Defendants' Exhibit No. F and was admitted in evidence.)

Q. By Mr. Carr: Incidentally, Mr. Ziegler, you were in court this morning when Mr. Loud testified, were you not? A. I was.

Q. I want to ask you if, during February, 1946, at 1031 South Broadway, the then office of the OPA, in the presence of Mr. Loud, Mr. Jack Foster and Mr. Jonas Taylor, you made the statement that you were going to get sugar one way or another? A. No.

Q. You were admitted to the bar at that time, were you not? A. Yes.

Mr. Carr: May I have just a moment, your Honor?

(Testimony of Paul J. Ziegler)

(Brief pause in the proceedings.)

Q. By Mr. Carr: Oh, Mr. Ziegler, the John H. Ziegler Company does not sell sugar, does it? [372]

A. No, nor do I.

Mr. Carr: I will ask that that check be marked—

Mr. Strong: It may be admitted if counsel wants it.

Mr. Carr: Very well.

The Court: Next in order, Exhibit G.

The Clerk: Defendants' Exhibit G in evidence.

(The document referred to was marked Defendants' Exhibit No. G and introduced in evidence.)

Q. By Mr. Carr: I show you, Mr. Ziegler, a check, a ration check, marked Defendants' Exhibit G in evidence, which is a check for 66,963 pounds of sugar from the—

The Court: 66,943?

Mr. Carr: 63. 66,963, your Honor, pounds of sugar, made out on the West Coast Supply Company. The bottom lines says, "Los Angeles, Calif., OPA District Office," and underneath that is some name which I cannot read.

Do you know, Mr. Strong, who it is?

Mr. Strong: No. But it is an official of the OPA.

Mr. Carr: An OPA official?

Mr. Strong: That is right.

Q. By Mr. Carr: Where did you find that check, Mr. Ziegler?

A. In an envelope addressed to the West Coast Supply Company sometime about the first week in July.

Q. About when? [373]

A. The first week in July of 1946.

Q. Was that before or after you had bought this sugar?

A. I am not sure, but I think it was after.

(Testimony of Paul J. Ziegler)

Q. I notice the check is dated June 28th, is it not?

A. Yes.

Q. Can you remember whether or not it was received or just about when it was received with reference to that date of June 28, 1946?

A. Well, it was not received before July 1st; but whether it was received on July 1st or on what date thereafter, I cannot be positive. I know that it wasn't there before July 1st.

Mr. Carr: No further questions.

Mr. Strong: Your Honor, I see that it is 4:15. I wonder if I could ask your Honor to recess at this time so that I can organize my cross examination better? It will probably save a lot more time. Also I am tired.

Mr. Carr: Well, I am tired, too, your Honor. But I would like to finish this case this week.

Mr. Strong: I will be finished with this witness before 12:00 tomorrow, your Honor.

Mr. Carr: Yes. But I have other phases of the case to put on, Mr. Strong.

The Court: I do not suppose we can get very far with the matter in 15 minutes. [374]

There has been handed to me a note advising me of the death of the Honorable Isidore Dockweiler. Mr. Dockweiler has been for many years one of the outstanding citizens of the State of California and one of the leaders of the Bar for more than half a century.

In his long and useful life he has represented the highest ideals of American citizenship, the father of a large family, each of whom has made valuable contributions to the development of this great State of California.

(Testimony of Paul J. Ziegler)

He declined many honors. He was offered a high position by President Wilson but declined it. He never turned a deaf ear to an appeal for help.

He was an officer of this court; and but a few days ago appeared before our Senior Judge, Paul J. McCormick, at which time he moved the admission of a lawyer to practice in the Federal Courts.

An outstanding citizen, a great humanitarian, loyal and devoted son of the Golden State, a truly great lawyer, an eloquent advocate has passed to the Great Beyond.

Ladies and gentlemen, this court will adjourn out of tribute to the memory of the Honorable Isidore Dockweiler. I wish to express my great regret at his passing.

The jury will be excused until 10:00 a. m. tomorrow morning.

(Whereupon, at 4:15 o'clock p. m. an adjournment was taken until 10:00 o'clock a. m., February 7, 1947.) [375]

Los Angeles, California, Friday, February 7, 1947
10:00 A. M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 19,106, Criminal, United States vs. West Coast Supply Company, a partnership, and Paul J. Ziegler for further trial.

Mr. Strong: Ready for the Government.

Mr. Carr: Ready for the defendants.

The Court: Stipulate the jury is present?

Mr. Carr: So stipulated.

Mr. Strong: So stipulated.

The Court: Do you stipulate the defendant is in court?

(Testimony of Paul J. Ziegler)

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Proceed with the cross examination.

Cross Examination.

By Mr. Strong:

Q. Mr. Ziegler, I believe you said that you were never a partner of the West Coast Supply Company?

A. I did.

Q. Beg pardon? A. I did.

Q. I show you Government's Exhibit 10 for identification.

May I have these pages marked by letters, your Honor?
[377] There is more than one here.

The Court: Yes.

The Clerk: The pages of Government's Exhibit 10 for identification are marked 10-A, 10-B, 10-C, 10-D, 10-E, 10-F, 10-G, 10-H, 10-I, 10-J, 10-K and 10-L, all for identification.

(The documents referred to were marked Government's Exhibits Nos. 10-A to 10-L, inclusive for identification.)

Q. By Mr. Strong: Before I show you that, let me ask you another question.

Did you do any of the managerial work or any work for the West Coast Supply Company?

A. I did a great deal of work.

Q. I can't hear you. I am sorry.

A. I am sorry as well. I did a great deal of work for the West Coast Supply Company.

Q. You were the—beg pardon.

A. Particularly during 1943 and 1944 and 1945.

(Testimony of Paul J. Ziegler)

Q. How about 1946? A. Very little.

Q. What sort of— A. If any.

Q. —work did you do there in the preceding three years?

A. In particular I took care of practically all of the observance of Governmental regulations of the WPB and of [378] the FDA and of the OPA and of the War Manpower Commission, and so on.

Q. You were the person who was handling the OPA matters for the West Coast Supply Company during those three years? A. Yes, in large part.

Q. You were acting with the knowledge of the partners of the West Coast Supply Company?

A. That I can't answer what their knowledge was.

Q. You mean you were acting on your own?

A. I didn't say that, Mr. Strong. I said I cannot answer for their knowledge. In particular one of the partners, Allen S. Ziegler, was during all of this time absent in the Navy; and he may have known or not know, I can't tell you.

Q. But the other two partners who were not absent: they left all these matters to you, did they not?

A. If you insist on my drawing a conclusion, I would say they did.

Q. You say they did?

A. That would be my conclusion, yes.

Q. In other words, they did not have anything to do with the handling of the question of getting more sugar rations from the OPA, or anything like that? That was all done by you for them?

A. Insofar as it was done, yes.

(Testimony of Paul J. Ziegler)

Q. Yes. You did the purchasing of the sugar for West [379] Coast Supply Company, did you not? You dealt with the brokerage?

A. Well, I would rather you made your question more specific as to time, Mr. Strong, because I—

Q. 1945?

A. I don't recall that there was any sugar purchased from West Coast Supply Company in 1945.

Q. Did you say "from West Coast Supply Company"?

A. For West Coast Supply Company.

Q. How about 1946? Did you purchase sugar in 1946 for West Coast Supply Company?

A. I don't believe so, Mr. Strong.

Q. Did you purchase sugar? A. Yes.

Q. For whom did you purchase it?

A. For the John H. Ziegler Company.

Q. Is the John H. Ziegler Company what is known as an industrial user? A. Yes.

Q. Did the John H. Ziegler Company have any ration quota allocated by the OPA to purchase sugar?

A. It did not.

Q. Beg pardon? A. It did not.

Q. You, nevertheless, bought sugar directly for the John H. Ziegler Company? [380]

A. I did, and paid for it.

Q. Beg pardon? A. And paid for it.

Q. Did you not turn over any ration checks for that sugar?

Mr. Carr: I object to that question as being wholly out of the issues of the case. The John H. Ziegler Company is not charged here.

(Testimony of Paul J. Ziegler)

The Court: The only pertinency I can see is to determine whether or not these particular ration checks applied to that company.

Mr. Carr: The only trouble, your Honor, is it also exposes a question to possible other offenses and compels the defendant to testify against himself.

The Court: I will not permit that, if there were any other offenses testified to.

Mr. Carr: It may well lead to that.

Mr. Strong: Your Honor, he can claim his privilege as to self-incrimination if that is true.

The Court: Repeat the question.

(Question read by the reporter.)

Mr. Carr: That raises the question of another offense.

Mr. Strong: Your Honor, the whole theory of the defendants' case here appears to be that there are two separate companies; that somehow these checks get lost in the shuffle. [381]

I would like to know who did what so we can have the facts before the jury.

Mr. Carr: We do not object to that, but he is asking now if ration stamps or certificates were turned over on behalf of the John H. Ziegler Company. That is not in issue in this case.

The Witness: May I speak, your Honor?

The Court: I think he may be asked whether or not the checks in evidence represent purchases for John H. Ziegler Company.

Mr. Strong: Well, if your Honor please, I submit I would like to go further than that. If they say that they purchased sugar for the John H. Ziegler Company and not for the West Coast Supply Company and that con-

(Testimony of Paul J. Ziegler)

sequently there is no offense set forth in this information, I would like to know the facts.

The Court: That is admissible on another theory. The witness testified yesterday that this sugar was purchased for the John H. Ziegler Company.

Mr. Strong: Yes.

The Court: And that he paid for it. That is right.

Mr. Strong: Yes.

Mr. Carr: I am objecting to that feature. The only thing to which I am objecting he is asking if the John H. Ziegler Company gave ration stamps. That involves another offense not involved in this information at all. [382]

The Court: As I recall the law of evidence, the witness testified yesterday that when the defense went into a transaction whereby he claims that he paid for sugar which was purchased by the John H. Ziegler Company, that opens up that subject.

I do not believe that the Government then can be stopped from inquiring into that subject to determine the circumstances of that payment and whether or not—

Mr. Carr: Your Honor, I am not talking about the payment. I am talking about the delivery of ration checks or stamps. That is the only thing to which I am objecting.

In other words, that opens up the facet. If he did not give ration stamps, then it may well be there is another order violated; and that is not involved in this case at all.

He is being compelled to assert an offense against himself.

Mr. Strong: If your Honor please.

The Court: Yes?

Mr. Strong: I want to know whether he did purchase sugar for the John H. Ziegler Company. He says he did,

(Testimony of Paul J. Ziegler)

and one of the ways to purchase it is that you have to give ration cards.

The Court: I think it is admissible. I shall overrule the objection.

(Question read by the reporter.)

The Witness: The question is not quite clear, Mr. Strong. But I think the answer may be completed. [383]

Prior to July 1, 1946, I purchased sugar for the John H. Ziegler Company. I paid for the sugar so purchased for the John H. Ziegler Company, and in each and every instance prior to July 1, 1946, a ration point check for the amount of sugar purchased was given to the refinery or wholesaler from whom the sugar was purchased.

Q. By Mr. Strong: And is it not true that that ration point check was, in each and every instance, drawn on the account of the West Coast Supply Company?

Mr. Carr: That is objected to as raising a collateral offense, your Honor, prior to this information. It is raising the point of whether or not he violated some law prior to July 1st.

The Court: Overruled.

The Witness: Would you read the question, please, Mr. Reporter?

(Question read by the reporter.)

The Witness: No.

Q. By Mr. Strong: Was it drawn in any instances on the account of the West Coast Supply Company purchasing sugar for John H. Ziegler Company?

Mr. Carr: Your Honor, I object to this question because it is opening a collateral matter.

(Testimony of Paul J. Ziegler)

I can pass a check for myself to your Honor. The check could be endorsed and delivered by someone else. [384]

We are raising that whole collateral issue now, and the question is not a fair question.

Mr. Strong: I think it is a fair question.

The Court: Overruled.

The Witness: Read it, please, Mr. Reporter.

(Question read by the reporter.)

The Witness: Would you mind reframing the question, Mr. Strong? It is ambiguous the way you put it.

Mr. Strong: Yes.

Q. Here is what I want to know: I want to know whether in making the purchase of sugar for the John H. Ziegler Company during 1946 you say you gave them ration point checks. I want to know whether those ration point checks or any of those ration point checks that you gave for those purchases were drawn by you on the account of the West Coast Supply Company ration point account. A. Yes.

Q. And you were drawing checks on the account of the West Coast Supply Company whenever you drew them pursuant to authorization that you had from the West Coast Supply Company, as shown on Government's Exhibit 2, is that right?

Mr. Carr: The same objection, your Honor.

The Court: Overruled.

The Witness: Would you read it, please, Mr. Reporter?

(Question read by the reporter.) [385]

The Witness: No, I wouldn't say that.

(Testimony of Paul J. Ziegler)

Q. By Mr. Strong: Was there any other authorization which entitled you to draw on the sugar ration account of the West Coast Supply Company in addition to that exhibit, Government's Exhibit 2?

A. I wouldn't say that this is an authorization. If it is, I know of no other written authorization.

Q. Well, if you drew under any authorization, this is the only possible one if it is an authorization.

A. Well, Mr. Strong—

Q. Yes, Mr. Ziegler?

A. —in order to make my answer clear, this is the only instrument in writing that I know of which might be considered to be any written authorization.

Now, I don't want to mislead you. I hope I am not.

Q. No. Well, I do not want to mislead you either. I am simply trying to find out where there was the authority under which you drew checks for the West Coast Supply Company.

A. I say I am not answering that I drew any checks pursuant to this or anything else as an authority so to do, but that so far as I know if this is any written authorization, it is the only instrument of that character that there is or was.

Q. That is your signature on there, is it not?

A. It is. [386]

Q. That is the card filed with the bank?

A. Yes, but—

The Court: Well, the evidence shows that it is.

Mr. Carr: That was presented in the Government's case in chief.

Mr. Strong: It is to test the witness's credibility and develop other facts.

(Testimony of Paul J. Ziegler)

The Witness: Mr. Strong, if I may, I only partially answered your question, and I would like to complete it.

The Court: All right.

Mr. Strong: Yes, surely.

The Witness: This card, at the time it was filed with the bank, was not in the condition in which it now appears.

Q. By Mr. Strong: Well, what has been added?

A. If you will stand down here—

Q. Yes.

A. —I will show you. The “Manufacturing Dept.” which is typed in—

Q. Yes?

A. —has been subsequently scratched out.

Q. You mean that here where it says “Name of Account (Print),” then there are typed in the words “West Coast Supply Co.—Manufacturing Dept.”?

A. Yes.

Q. And what you are saying is that there is now a green [387] line through the words “Manufacturing Dept.” and that that green line wasn’t there at the time this card was filed with the bank?

A. That is correct.

Q. Do you by any chance know how that green line got there? A. I do not.

Q. These words down here where it says “Signature of Applicant—West Coast Supply Co. by Paul J. Ziegler”: Did you write that in there? A. I did.

Mr. Strong: Yes. May I show this to the jury, your Honor?

The Court: Yes.

The Witness: Pardon me, Mr. Strong.

(Testimony of Paul J. Ziegler)

Mr. Strong: Yes, sir.

The Witness: One more word.

Mr. Strong: Yes, sir.

The Witness: All of this was not on the card at the time that it was filed.

Q. By Mr. Strong: You are referring to a double box on the right-hand side which has printed at the top of it "Types of Ration Accounts," and what you are pointing to is some matter written in green ink on the right-hand side within that column? There are three short lines of it. That, [388] you say, was not there?

A. That is correct.

Q. That was added by somebody else?

A. Right.

Q. Is there anything else that was not there?

A. This bank rubber stamp and the date, I believe, were placed on the card at the time it was filed.

Q. In your presence?

A. Well, I don't recall, but—

Q. You do not—go ahead. I am sorry.

A. It was either placed on there at the time when the card was brought in or immediately thereafter.

Q. You do not deny that this account is with the Union Bank and Trust Company? A. Oh, no, no.

Q. Or that it was opened around March 17th?

A. That's right.

Mr. Strong: May I pass this to the jury, your Honor?

The Court: Yes.

Mr. Strong: It is dated March 17, 1943.

(Document passed to the jury.)

(Testimony of Paul J. Ziegler)

Q. By Mr. Strong: I show you a group of checks, which are Government's Exhibit 8 in evidence, and ask you whether you drew those checks as shown.

Mr. Carr: Before you answer, may I see the exhibit? [389]

That question is objected to on the ground it is prior to the information, your Honor, not involved in the issue and it raises collateral issues which may be prejudicial to this defendant.

The Court: It goes to willfulness and intent.

The Witness: With respect to each of these checks, Mr. Strong, I signed each of them.

Q. By Mr. Strong: Yes?

A. That is, each of them bears my signature. And respect to the first—

Q. That is numbered 119?

A. Yes. With respect to the first of these exhibits, which is check No. 119, all of the checks including "West Coast Supply Co.—Industrial," which appears above the written phrase "Print or Type Name of your Account" was written by me.

Q. By you? A. Yes.

Q. Thank you.

A. On the second check, which is check No. 125, in addition to my signature, or rather I should say the rubber stamp "West Coast Supply Co.—1654 Long Beach Ave.—Los Angeles 21, Calif." and the printed "Industrial" above the name of the account, was on the check at the time I signed it. [390]

Q. Now about the handwritten matter on the check?

A. That is not my handwriting.

A. All right.

(Testimony of Paul J. Ziegler)

A. But all of the handwritten matter was there at the time I signed the check.

The third in the series, which is check No. 136, in addition to my signature there is my printed script above the name of the account "West Coast Supply Co.—Wholesale," which is also in my handwriting, rather in my printed writing, which was on the check at the time I signed it.

The third check, No. 122, has a rubber stamp "West Coast Supply Co.—1654 Long Beach Ave.—Los Angeles 21, Calif." which was on the check at the time that I signed it, it has, however, a pencilled notation at the side which I am unable to identify.

The next check, which is check No. 120, has on it in my printed script "West Coast Supply Co." and alongside written in "Industrial," which is not my handwriting and which was not on the check at the time I signed it, that is, the "Industrial" was not.

Check No. 122 is the next check and contains in my printed script as well as my signature "West Coast Supply Co." above it, and at the side written in is the word "Industrial," which I don't know whose handwriting it is and I do not believe it was there at the time I signed the check. [391]

The next check, which is check No. 124, has a rubber stamp "West Coast Supply Co.—1654 Long Beach Ave.—Los Angeles 21, Calif." and alongside printed in ink the word "Industrial," all of which was on the check at the time I signed it.

Q. Those checks are all in 1946, is that right?

Mr. Carr: I think the checks show on their face.

(Testimony of Paul J. Ziegler)

The Court: Yes.

Mr. Strong: All right.

The Witness: They are all April, 1926, except the last which is May 2nd.

Q. By Mr. Strong: 1946?

A. 1946. I am sorry.

Q. At the time that you drew these checks, had any one of the partners in West Coast Supply Company, previous to that time or at any time or subsequent to that time, instructed you that you could draw checks on their account?

Mr. Carr: Objected to as raising a collateral offense, your Honor, delving into matters that are not charged in this information.

The Witness: Read it, please, Mr. Reporter.

(Question read by the reporter.)

The Witness: No.

Q. By Mr. Strong: I show you Government's Exhibit 10 for identification and ask you to look at the sheet marked [392] 10-A, which I am now showing you, the reverse side. That, I understand, is your signature?

A. It is.

Q. Did you write the word "partner" below it?

Mr. Carr: That is objected to as immaterial and prejudicial. It has no bearing on any issue in this case.

The Court: Overruled.

The Witness: Yes.

Q. By Mr. Strong: Did you write the words "West Coast Supply Co." below that? A. I did.

Q. Were you a partner of the West Coast Supply Company at that time? A. I was not.

(Testimony of Paul J. Ziegler)

Q. I show you Government's Exhibit 10-B and ask you whether that is your signature? A. It is.

Q. Did you send that letter? A. Yes.

Mr. Carr: I object to that on the same ground. The answer may stand if your Honor's ruling is the same.

The Court: Yes, overruled.

Q. By Mr. Strong: Were you acting on behalf of the West Coast Supply Company when you sent that letter?

Mr. Carr: Well, I submit that is a legal question, your [393] Honor.

Mr. Strong: It is a factual question, your Honor.

The Court: Mr. Carr, he said he did act in some capacity for the West Coast Supply Company at certain times and at other times he did not. So in view of that testimony, I assume this question is proper.

The Witness: I can't give you a categorical answer to the question, Mr. Strong; that is, I can't answer yes or no to it.

If I am permitted to explain my answer, I can answer.

Mr. Strong: Yes, please.

The Court: Yes.

The Witness: The question is whether when I sent this letter I was acting on behalf of the West Coast Supply Company. And my answer to that would be, No, that I wasn't acting on behalf of the West Coast Supply Company. I was acting on my own behalf, that is, on behalf of the John H. Ziegler Company in which I was a partner and which I ran and operated.

On behalf of that company I had procured an allotment of sugar for freezing fruit from the OPA.

(Testimony of Paul J. Ziegler)

That allotment I had procured in the name of West Coast Supply Company. I used it. I was reporting on it so that when I reported on it I reported on it on my own behalf and not for the West Coast Supply Company.

Insofar as West Coast Supply Company was concerned, West [394] Coast Supply Company was a name only in respect to this transaction.

Q. By Mr. Strong: Then why did you put on that letter "Yours very truly, West Coast Supply Co., Paul J. Ziegler"? A. Because, Mr.—

Mr. Carr: That is objected to—

The Court: Overruled.

Mr. Carr: —as subjecting the witness to collateral issues and other possible offenses.

The Court: Overruled.

The Witness: Because, Mr. Strong, when I got the allotment for the purpose of freezing the fruits, I got the allotment in the name of the West Coast Supply Company. And when I reported on the use of the allotment, I reported on it in the name of the West Coast Supply Company.

Q. By Mr. Strong: I see. Now, just going through hurriedly, would you examine all the rest of these documents, which constitute a part of Government's Exhibit 10?

I believe that you have already agreed that they bear your signature?

Mr. Carr: Now, is that a correct statement, Mr. Strong?

Mr. Strong: You stipulated, Mr. Carr, that these documents have the signature of Paul J. Ziegler.

Mr. Carr: Did I?

(Testimony of Paul J. Ziegler)

The Court: He can examine them and shorten it up if [395] there is any question, gentlemen.

Examine them, Mr. Ziegler.

The Witness: (Examining documents) Yes, those are all signed. They are all signed by me, your Honor.

Q. By Mr. Strong: You sent those letters that are a part of Government's Exhibit 10, is that right?

A. The letters which compose this exhibit, all of them were transmitted or they were mailed or brought in by hand—I can't positively recall—but as to their present condition, there is in each instance various matter appearing now on the letter which was not there at the time it was transmitted.

Q. By Mr. Strong: Well, the typewritten material was on it, is that right, and the printed letterhead was on it?

A. Yes, all of the matter which is typed in on each letter was there at the time it was transmitted.

Q. That includes the words "Very truly yours, West Coast Supply Co.," and then your name? A. Yes.

Q. And on this document, which is numbered Government's Exhibit 10-K for identification, would you say that you wrote "Paul J. Ziegler, partner, West Coast Supply Co." on that?

Mr. Carr: Same objection, same grounds, your Honor.

The Court: Overruled.

The Witness: Yes, I did. Pardon. You refer now to— [396]

Q. By Mr. Strong: Just to -K.

A. Yes, I did.

Q. As to -L, that is your signature? A. Yes.

(Testimony of Paul J. Ziegler)

Q. You had this file and filed this document, Government's Exhibit 10-L? A. Yes.

Mr. Strong: I offer in evidence Government's Exhibit 10 and all its component parts.

Mr. Carr: That is objected to on the ground that it raises collateral issues, collateral offenses; confuses the issue and works to the prejudice of this defendant.

Furthermore, there is no issue involved and you cannot prove partnership by an act or declaration of an agent.

The Court: Overruled.

The Clerk: Government's Exhibit 10 in evidence.

(The documents referred to were marked Government's Exhibit No. 10 and introduced in evidence.)

Mr. Strong: May I show that to the jury, your Honor?

The Court: Yes.

(Documents passed to the jury.)

Mr. Strong: May I have these four documents marked as one exhibit?

The Clerk: The next exhibit for the Government will be Government's Exhibit 39 for identification. [397]

(The documents referred to were marked Government's Exhibit No. 39 for identification.)

Mr. Strong: I show you Government's Exhibit 39 for identification and ask you to look at each of the four pages where it bears a signature and a title and other words.

Will you state as to the first, second and third sheets whether that is your signature, "Paul J. Ziegler," whether you wrote the word "partner" and the words "West Coast Supply Co."?

(Testimony of Paul J. Ziegler)

Mr. Carr: May I have it understood the same objection on the same grounds runs to this line of questions, your Honor?

The Court: Well, there may be some new matter developed.

Mr. Carr: If it is new, I understand it applies.

The Court: If there is something new, it may go in.

Mr. Carr: I object on the same ground.

The Court: Overruled.

Q. By Mr. Strong: All I am asking about is the signature and the word "partner" and the words "West Coast Supply Co." on Government's Exhibit 39?

A. Yes, in each instance it is my signature. The word "partners" is written by me. The words "West Coast Supply Co." are written by me.

Q. On the fourth page is that your signature and the word "partner" and the date? A. Yes. [398]

Q. You wrote that? A. Yes.

Q. Were these documents filed on or about the date shown on them by you or through you with the OPA?

Mr. Carr: Your Honor, I hate to object to each one of these questions.

The Court: It will be understood that all of the objections will run to this exhibit No. 39.

Q. By Mr. Strong: Just the typed portions. I am not interested in the pencilled notations in black or the red ink that somebody obviously wrote in in black or red.

A. Some of these documents are entirely in handwriting and no part of it is typed.

Q. Well, you had them prepared and filed, is that right, except for some things you say are added?

A. Well, Mr. Strong—

(Testimony of Paul J. Ziegler)

Q. Yes, sir?

A. —the first page here, which is dated May 26, 1944—

Q. Yes, sir?

A. —contains no part of my handwriting at all, except the signature on the reverse side.

Q. Just the signature and the word “partner” and the words “West Coast Supply Co.” Thank you.

A. I can’t tell you when it was filed or who filled it [399] out or what it means.

Q. Yes.

A. This second sheet I am certain was filed and was all typed and completed. I recognize the typing as well as my handwriting. That unquestionably was filed in the form in which it now appears, except for whatever corrections, whatever changes were made on it. Otherwise it was by the typewriter.

The Court: A little louder, Mr. Ziegler.

The Witness: I am sorry, your Honor. The third one, the first page is in my handwriting. The signature and the other language is likewise in my handwriting.

All of the material on the second page is not my handwriting. I don’t know what it is, whose handwriting it is, when it got there or what it refers to.

Q. By Mr. Strong: Except “Paul J. Ziegler, partner, West Coast Supply Co.”? A. That is correct.

Q. You wrote that?

A. All right. The fourth sheet is in my printed script, except for the matters which appear in pencil.

Q. Signed by you as partner?

A. That is right.

(Testimony of Paul J. Ziegler)

Q. And prepared on or about the dates shown on them, with the exception of the first sheet?

A. Yes, that is, the second sheet was prepared on or [400] about March 21, 1945. That is the one pertaining to meats, fats and oils.

Q. Yes. A. I am sorry.

Q. That is all right.

A. The fourth was prepared on or about September 12, 1945.

Q. As I understand, as to the second, third and fourth sheets, they were filed with the OPA?

A. Yes. Don't misunderstand me, Mr. Strong. So far as I know, the first one was filed with the OPA, too, except that I know nothing about what appears there.

Mr. Strong: To eliminate any question, if I may, your Honor, I should like to remove the first sheet from Government's Exhibit 39. And I offer the other three sheets in evidence and withdraw the first sheet.

The Court: Subject to the same objection, in evidence.

The Clerk: Government's Exhibit 39 in evidence, three sheets.

(The documents referred to were marked Government's Exhibit 39 and introduced in evidence.)

Q. By Mr. Strong: I show you Defendants' Exhibit F, which you said was a check used to pay for the sugar which we have been discussing here, purchased from the Union Sugar Company; is that right? [401]

A. Yes.

Q. And up here it says: "In payment of the following—date—items—amount—West Coast Supply Co."

(Testimony of Paul J. Ziegler)

What does that mean?

A. The rubber stamp placed on checks of the John H. Ziegler Company to identify for the payee's book-keeper the invoice which the Union Sugar Company in this instance had issued, which had been made to the West Coast Supply Company.

Q. And was for the sugar which was covered by ration check No. 144, Government's Exhibit 6, is that right?

Mr. Carr: I object to his referring to that as a "ration check," because the evidence shows it is not.

The Court: I do not think either statement is correct.

Mr. Carr: I think it is, your Honor. My statement is correct under Ration Order, revised order No. 3.

The Court: Oh, no, Mr. Carr. That is a matter for the jury.

In other words, the court is not going to determine questions of fact.

Mr. Carr: That is a question of law. My contention is that is a question of law, your Honor.

The Court: No. The Government should not have stated the question, as you have stated, Mr. Carr; and, of course, the court could not accept the statement on either side. So strike out the question. [402]

Mr. Strong: Thank you, your Honor. I shall re-frame it.

Q. This cash check for \$36,838.20, Defendants' Exhibit F, was the check in payment of the sugar covered

(Testimony of Paul J. Ziegler)

by the piece of paper, which is identified as Government's Exhibit 6 in evidence, is that right?

Mr. Carr: May I have that question. I am sorry.

The Court: Yes, repeat the question.

(Question read by the reporter.)

The Witness: So as to be perfectly clear, this money check, which is Defendants' Exhibit F, was given in payment for 6,000 bags, that is, 600,000 pounds of sugar to the Union Sugar Company.

This slip of paper, which is Government's Exhibit 6, was given to the Union Sugar Company in connection with the same 6,000 bags or 600,000 pounds of sugar for which the money check was given in payment.

Q. By Mr. Strong: Thank you, sir. I don't see here any of the other checks used in payment for the transactions involving the 30,000 pounds of sugar which was sold by the Spreckels Sugar Company in connection with which the piece of paper marked Government's Exhibit 5 was given, nor the check, money check, covering the other two transactions of 660,000 pounds and 80,000 pounds.

I ask you whether the cash checks were in the same form as this Defendants' Exhibit F? [403]

A. If it would be of any help to you, Mr. Strong, the checks are here in court.

Mr. Strong: May I see them?

Mr. Carr: Just a moment. I will decide that. I am the counsel in the case.

Mr. Strong: I am sorry. May I see them?

(Testimony of Paul J. Ziegler)

Mr. Carr: No.

Mr. Strong: I call upon the defendant for the production of the three checks.

Mr. Carr: Now, I cite that as error to call upon the defendant upon the stand to produce any evidence in this case, and I ask your Honor to instruct the jury that he is not compelled to produce any evidence, except that which he desires to produce.

The Court: In other words, on cross examination?

Mr. Carr: No, your Honor, he is not compelled to produce anything.

The Court: Oh, yes. When a witness is on the stand, Mr. Carr, the Government is entitled to cross examine him on any matters that pertain to the issue.

Mr. Carr: Does your Honor order me to produce the checks?

The Court: Yes.

Mr. Carr: I will produce them, but I want it understood it is over my objection.

The Court: That is right. Let the record so show. [404]

Mr. Carr: I might add to that, on the further ground that it might tend to incriminate or bring other and collateral offenses into this case which are not charged in the information.

The Court: That is personal privilege.

I instruct the witness at this time, in view of the statement of counsel, that if you feel, Mr. Ziegler, that

(Testimony of Paul J. Ziegler)

the production of these instruments might tend—not “do” at all—might tend to incriminate you, you have the right to refuse to answer and the court will deny the request of the Government to produce the documents.

Mr. Strong: I think it will save time if I withdraw the request, your Honor. I would rather withdraw it.

Mr. Carr: Then I am going to move at this time that the court instruct the jury to disregard the whole incident. Counsel for the Government should not have asked for them if he did not want them.

This business of making a play of asking for them and very touchingly giving up the request I don’t think is a proper approach.

Mr. Strong: May I have the checks, your Honor?

The Court: Produce the checks.

(Brief pause in the proceedings.)

Mr. Carr: Do you find them?

The Witness: Yes.

Mr. Carr: May I pick up the rest of those? [405]

The Court: Yes.

Mr. Carr: Just take the checks off.

(Brief pause in the proceedings.)

Q. By Mr. Strong: Do you now have the checks,
Mr. Ziegler? A. Yes.

Q. May I see them?

A. (Handing documents to counsel.)

Mr. Strong: May the record show that the witness is handing me the checks?

(Testimony of Paul J. Ziegler)

I should like to have them marked first before we say anything.

The Witness: All right.

Mr. Strong: May I have these checks marked for identification, each one a separate Government exhibit?

The Court: Look at the dates and try to get them in order by dates.

The Clerk: The first check will be Government's Exhibit No. 40 for identification, and that is dated July 5, 1946.

The next check is Government's Exhibit No. 41 for identification, and that is dated July 8th, 1946.

The next Government's Exhibit is No. 42 for identification, and that check is dated July 11, 1946.

The next check is Government's Exhibit No. 43, and that is dated July 11, 1946. [406]

And the next check is Government's Exhibit No. 44 for identification, and that is dated July 11, 1946.

(The documents referred to were marked Government's Exhibits Nos. 40 to 44 inclusive, and introduced in evidence.)

Mr. Carr: I have seen those, Mr. Strong.

Mr. Strong: Thank you.

Q. Now, I show you Government's Exhibits 40, 41, 42, 43 and 44. Would you now state what those are?

A. Yes.

(Testimony of Paul J. Ziegler)

Q. Let me also give you at the same time pieces of paper marked as Government's Exhibits 3, 4 and 5 in evidence.

Will you state in connection with which of these pieces of paper the money check is concerned?

Mr. Carr: Your Honor, I object to this line of questioning, so that I won't be interrupting, and I object on the grounds that I have heretofore enumerated.

The Court: Yes.

Mr. Carr: And if there is a variation, I shall at that time either waive or make my objection.

The Court: All right. It is so understood by the court and the jury.

The Witness: This Government's Exhibit No. 40, which is check No. 2698 of the John H. Ziegler Co., signed by me, to the Union Bank and Trust Company for \$24,645.04, and Government's Exhibit No. 41, which is check No. 2699 of the [407] John H. Ziegler Co., signed by me, to the Union Bank and Trust Company for \$12,-322.52; and Government's Exhibit No. 44, which is check No. 2726 from the John H. Ziegler Co., signed by me, to the Holly Sugar Corporation for \$3,696.76, these three money checks, Government's Exhibits 40, 41 and 44, were all given in payment—the first two were given to the Union Bank and Trust Company for cashier checks which were in turn given to the Holly Sugar Company. The third check was given directly to the Holly Sugar Company, all in payment for 660,000 pounds or 6,600 bags

(Testimony of Paul J. Ziegler)

of sugar which was shipped by the Holly Sugar Corporation or rather which was ordered from the Holly Sugar Corporation in connection with the same transaction.

In connection with the same transaction, this Government's Exhibit 4, this piece of paper, made to the Holly Sugar Company covering 660,000 pounds, was also given.

This money check, which is check No. 2724 of the John H. Ziegler Co., signed by myself, payable to the Spreckels Sugar Company for \$1,866.02, was given to the Spreckels Sugar Company in connection with the sale by the Spreckels Sugar Company of 300 sacks of sugar in connection with which this piece of paper, Government's Exhibit 5 covering 30,000 pounds, was also given.

This Government's Exhibit No.—it looks like “43,” but I am not sure.

The Court: Yes, Exhibit 43. Those are 42 and 43. As to [408] Government's Exhibit 43 I have noted the date “July 11, 1946.”

The Witness: This Government's Exhibit No. 43, which is a check of the John H. Ziegler Co., 2725, signed by me, to the California and Hawaiian Sugar Refining Corporation for \$5,007.42, was given to the California and Hawaiian Sugar Refining Company, that is, the C & H Sugar Company—

The Court: Now, I do not think Mr. Carr can hear anything over there.

(Testimony of Paul J. Ziegler)

The Witness: I am sorry, your Honor. My throat is so bad. I will try to do better.

This Exhibit 439, which is check No. 2725 of the John H. Ziegler Co., signed by me, to the California and Hawaiian Sugar Refining Corporation for \$5,007.42, was given to the California and Hawaiian Sugar Refining Corporation, that is, the C & H Sugar Company, in connection with the sale by it of the 80,000 pounds of sugar, in connection with which this piece of paper, which is Government's Exhibit 3, was given to the same company.

Q. By Mr. Strong: Now, I notice that on these checks which are drawn directly to the sugar companies, John H. Ziegler money checks, which are Exhibit 42, 44 and 43 for identification, there is also in the left-hand corner imprinted the words "West Coast Supply Co." in the column that says "In payment of the following"

Is that your explanation as to the presence of those words [409] on those checks, the same as it was in connection with the check which is Defendants' Exhibit F?

A. In each instance, Mr. Strong, the rubber stamp "West Coast Supply Co." is placed on the check in the corner to identify for the payee's bookkeeper the invoices which the check pays.

Q. In other words, those invoices were in the name of the West Coast Supply Company?

A. I am not positive as to that.

Q. Sir?

(Testimony of Paul J. Ziegler)

A. In the event that they were, the stamp is placed there so that the bookkeeper will not, if the invoice was made out to West Coast Supply Company, mis-identify the check and fail to give credit for it.

Q. Well, when you put the orders in with the brokers, did you not tell them who the sugar was for?

A. I did not.

Q. What did you order? Just sugar for nobody?

A. Mr. Strong—

Q. Yes?

A. —when I called on the sugar brokers I called and ordered the sugar. You asked me whether I told them who it was for. I didn't.

Q. You told them your name?

A. I didn't even have to tell them that. They were [410] sufficiently well acquainted with me to know from my voice who was talking.

Q. You just called each of the brokers and ordered a certain amount of sugar? A. Yes.

Q. And you had been buying sugar from those brokers previously? A. Yes.

Q. Had you been buying that sugar in any particular name?

A. Mr. Strong, you would have to make your question a little more specific than that in order for me to answer.

Q. I can't make it any more specific.

The Court: Now, do not argue with the witness.

Mr. Strong: I am sorry. I apologize.

(Testimony of Paul J. Ziegler)

The Court: If he does not understand it, he is entitled to have it reframed.

Strike out the question and reframe it.

Mr. Strong: May I have the question?

(Question read by the reporter.)

Mr. Carr: I submit, your Honor, that question is difficult to answer, particularly as to the name. He should ask him the fact.

The Court: Yes, ask him.

Q. By Mr. Strong: Had you been buying sugar for the [411] West Coast Supply Compay from those brokers?

A. Well, Mr. Strong, you will still have to make your questions more specific with respect to the broker and with respect to the time before I can give you an answer that will be intelligible to you or the jury.

Q. During 1946 you had been buying sugar through brokers? A. Yes.

Q. Did you at any time buy sugar in the name of the West Coast Supply Company or for the West Coast Supply Company?

A. If you confine your question to 1946, Mr. Strong—

Q. Yes, sir. A. —during 1946—

Q. Yes, sir.

A. —I had bought for the John H. Ziegler Company sugar from these brokers. I am not sure, but I think that during 1946 I had bought some sugar from each one of these companies prior to the first of July. And I

(Testimony of Paul J. Ziegler)

would believe that in each instance the invoices, or at least some of the invoices for that sugar, were made to the West Coast Supply Company.

The purchases, however, were made by me, that is, by the John H. Ziegler Company, were paid for by me, that is, the John H. Ziegler Company.

Q. But as far as the brokers were concerned, they billed that sugar to the West Coast Supply Company? [412]

Mr. Carr: That question is obvious. The record shows. It isn't up to the witness to answer that question. The record shows.

The Court: The record would be the best evidence.

Mr. Strong: Well, I am cross examining the witness and testing his credibility. I believe, if your Honor please, I should be permitted to ask him.

The Court: I am not objecting to that, but would not the records be the best evidence, counsel?

The Witness: May I ask a question, if your Honor please?

Mr. Strong: I think before I could impeach him or seek to bring in records, I should ask him the question.

The Court: Well, if he knows.

Q. By Mr. Strong: If you know?

A. May I have the question, please?

(Question read by the reporter.)

The Witness: Mr. Strong—

Mr. Strong: Yes, sir?

(Testimony of Paul J. Ziegler)

The Witness: —I don't want to argue with you, but the question is not intelligible in the form in which you put it.

Mr. Strong: I am sorry.

The Witness: The broker has nothing to do with the billing; and, of course, I can't tell you what the—

Mr. Strong: I will reframe it. I am sorry.

Q. What I want to know is this, Mr. Ziegler: You [413] called up four brokers on July 1, 1946, and bought sugar, is that right? A. That's right.

Q. You say you just called up and they knew your voice or you gave them your name and they sold you sugar? A. Right.

Q. And that sugar was thereafter sent and billed to the West Coast Supply Company, is that right?

A. I believe it was.

Q. Where did they get the name "West Coast Supply Company," if you know?

Mr. Carr: That is different.

The Witness: Uh-huh.

Q. By Mr. Strong: If you know?

A. Certainly I know.

Q. Yes?

A. They got it because from 1941 on the West Coast Supply was in business, was an established account of some of these sugar refineries for whom these brokers were acting. They thought they were requiring in their dealings with respect to sugar to have the sugar billed to an established account.

(Testimony of Paul J. Ziegler)

For two years prior to that time the sugar brokers had received in payment for the sugar which they had invoiced the checks of the John H. Ziegler Company, and they knew just as well as I did that the John H. Ziegler Company was buying the [414] sugar and that the John H. Ziegler Company would pay for the sugar.

Q. Are you finished? A. Yes.

Q. Did you give them ration checks for the sugar for the past two years?

Mr. Carr: I object to that. He says now "for the past two years."

Mr. Strong: That is the time the witness said, your Honor.

Mr. Carr: It is a collateral issue. It involves whether or not he committed offenses prior to this information. It is wholly immaterial and it is prejudicial. It was not opened on direct either.

The Court: Yes. If the witness feels that will not incriminate him but will tend to do so, he does not have to answer the question, counsel.

I shall sustain it if the witness expresses that opinion.

The Witness: Your Honor, I would take this opportunity as a matter of record, to state that I have no fear whatever of incrimination.

The Court: All right, answer the question.

The Witness: May I had it read?

(Question read by the reporter.)

The Witness: Yes, I did.

Q. By Mr. Strong: Were the checks drawn on the account of the West Coast Supply Company? [415]

(Testimony of Paul J. Ziegler)

Mr. Carr: Same objection, same grounds.

The Court: Same ruling.

The Witness: Yes. Pardon me. Not in every instance, Mr. Strong.

Q. By Mr. Strong: In some instances you did what?

Mr. Carr: Same objection.

The Court: Overruled.

Mr. Carr: Well, your Honor, did what in some instances? The question is not intelligible.

The Court: The witness is the one to state if it is not intelligible, Mr. Carr. He said in some instances. Now counsel asked in what instances.

Repeat the question.

(Question read by the reporter.)

The Witness: In some instances checks in advance, either the checks of the West Coast Supply Company or OPA checks, were deposited with the sugar refineries.

The Court: You are referring now to ration checks, not cash checks?

The Witness: That is correct, your Honor.

The Court: All right.

The Witness: I am referring to checks for ration points.

The Court: All right.

Mr. Strong: I would like to—

The Court: We will take the morning recess, ladies and [416] gentlemen of the jury. Remember the admonition I have heretofore given you not to discuss the matter among yourselves or permit anyone to discuss it

(Testimony of Paul J. Ziegler)

in your presence until the matter is finally submitted to you. You will not form nor express any opinion as to the merits of the controversy until it is finally submitted to you under the instructions of the court.

(Brief recess.)

The Court: Stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Proceed.

Mr. Strong: At this time, your Honor, I should like to offer in evidence Government's Exhibits 40, 41, 42, 43 and 44 which are the money checks.

Mr. Carr: I am going to object to those. I have heretofore objected on the ground that the defendant was called upon to produce them when he was not required to, and they were produced under order of the court over the objection of counsel for the defendant.

The Court: Overruled. In evidence.

The Clerk: Government's Exhibits 40 to 44, inclusive, in evidence. [417]

(The documents referred to were marked Government's Exhibits Nos. 40 to 44, inclusive, and introduced in evidence.)

[GOVERNMENT'S EXHIBIT NO. 40]

PAY TO THE ORDER OF		LOS ANGELES, CAL.		19
Union Bank & Trust Co.				\$24,645 ⁰⁴
TO THE		DOLLARS		
UNION BANK & TRUST CO.		John H. Ziegler Co.		
OF LOS ANGELES				
SAVINGS COMMERCIAL TRUST		By <i>Paul J. Ziegler</i>		
LOS ANGELES, CAL. 16-77				

19106a West Coast Staffs

40 40

4/9/49

U.S. District Co.

11553



[GOVERNMENT'S EXHIBIT NO. 41]

14th Aug 1946		LOS ANGELES, CAL.		JULY 8 1946	
PAY TO THE ORDER OF		Yipes Bank + Trust Co.		\$12,322.52	
TO THE		UNION BANK & TRUST CO.		DOLLARS	
SAVINGS		OF LOS ANGELES			
COMMERCIAL		TRUST			
LOS ANGELES, CAL. 16-77		12			
MEMBER FEDERAL RESERVE BANK		John H. Ziegler Co.			
		BY Paul J. Ziegler			

191060

West Coast Supply

41

41

U.S. District Court

11555

[GOVERNMENT'S EXHIBIT NO. 42]

4414	12-3	Misc	3804
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PAY TO THE ORDER OF *Speckels Sugar Co.* 19

\$ *1,866⁰²/₂*

DOLLARS

UNION BANK & TRUST CO.
OF LOS ANGELES
SAVINGS COMMERCIAL TRUST

Los Angeles, Cal. 16-77

John H. Ziegler Co.

Paul J. Ziegler

FOR DEPOSIT TO THE CREDIT OF

D. & A. D. SPECKELS COMPANY

WESTERN SUGAR REFINERY

SPECKELS SUGAR COMPANY

GULF WARREN RICE & COLES CO

MAHAU SUGAR PLANTATION CO

SPECKELS SUGAR CO

Case No. *19106a.* VS. *West Coast Supply Co.*

EXHIBIT No. *42* IDENTIFICATION

No. *42* IN EVIDENCE

2/9/47 No. *42* OF *16-3*

ANY BANK OR BANK OF THE UNITED STATES

LOS ANGELES, CALIF. 16-77

PRIOR ENCLOSUREMENT

SECURITY-FIRST NATIONAL BANK

16-3 OF LOS ANGELES 16-3

11552

<p>CHAPTER I</p> <p>The first year of the reign of King Charles the First, was a year of great calamity to the kingdom. The king, who was then in his thirty-first year, was a man of a high spirit, and a great love of liberty. He was a man of a high spirit, and a great love of liberty. He was a man of a high spirit, and a great love of liberty.</p>	<p>CHAPTER II</p> <p>The second year of the reign of King Charles the First, was a year of great calamity to the kingdom. The king, who was then in his thirty-second year, was a man of a high spirit, and a great love of liberty. He was a man of a high spirit, and a great love of liberty. He was a man of a high spirit, and a great love of liberty.</p>
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[GOVERNMENT'S EXHIBIT NO. 43]

2/3	9292	0150	10218
<p>BONDS</p> <p>LOS ANGELES, CALIF. 19</p> <p>PAY TO THE ORDER OF <i>City of Hawaiian Islands Refining Corp.</i> \$5,007 ⁴²/₁₀₀</p> <p>UNION BANK & TRUST CO. OF LOS ANGELES SAVINGS COMMERCIAL TRUST LOS ANGELES, CAL. 16-77</p> <p>TO THE</p> <p>By <i>Paul J. Ziegler</i></p> <p>John H. Ziegler Co.</p> <p>DOLLARS</p>			

Case No. *191060*

VS.

What cost to the

EXHIBIT

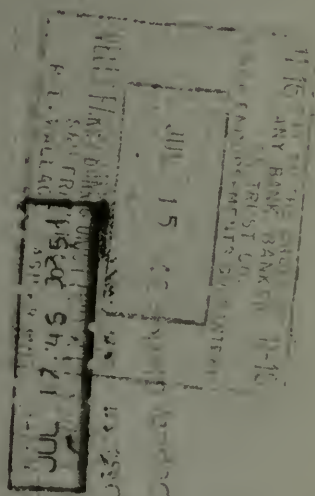
No. *42*

No. *43*

2/9/47

U.S. District Court, S.D. Cal.

Cross



11553

THE NEW YORK STATE

[GOVERNMENT'S EXHIBIT NO. 44]

BONDS

Los Angeles 21, Calif.

7/1	2815	disc	75 44
10 16	20		
1848	38		

LOS ANGELES, CAL. 19

PAY TO THE ORDER OF

Holly Sugar Corp.

\$ 3,696.76

DOLLARS

TO THE
UNION BANK & TRUST CO.
OF LOS ANGELES

SAVINGS
COMMERCIAL
TRUST
LOS ANGELES, CAL. 16-77

John H. Ziegler Co.

Paul J. Ziegler

12

West Coast Suits

19106 u

VS.

EXHIBIT

NO. 44

NO. 44

2/7/49

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
LOS ANGELES

11
PAY THROUGH
LOS ANGELES CLEANSING HOUSE
OR PAY TO THE CREDIT OF
ANY BANK OR BANKER
PRIOR ENDORSEMENT REQUIRED
JUL 18 1946
CITIZENS

11555

(Testimony of Paul J. Ziegler)

Mr. Carr: Could we substitute photostatic copies for those?

The Court: Yes, so ordered.

Mr. Strong: May I show those documents to the jury, your Honor?

The Court: Yes.

Mr. Strong: Plus some others?

The Court: If they are in evidence.

Mr. Strong: Yes, only if they are in evidence.

(Counsel passes documents to the jury.)

Q. By Mr. Strong: Now I will show you Defendants' Exhibit G for identification, which you said was a check, a ration check—I think it was stipulated that this was a ration check—issued by the Office of Price Administration, and I believe you said that you found that subsequent to July 1st in the mails, or some place?

A. Yes.

Q. Did you find that on the premises of the West Coast Supply Company? A. Yes.

Q. That check is drawn to the West Coast Supply Company, is that right? A. Yes. [418]

The Court: What is the exhibit, Mr. Ziegler?

The Witness: Exhibit G, your Honor.

The Court: All right.

The Witness: Defendants' Exhibit G.

Q. By Mr. Strong: That check was never deposited to the account of the West Coast Supply Company at the Union Bank or any other bank?

A. Never deposited, never cashed, never transferred.

Mr. Strong: May I have this in evidence, your Honor, as Government's next in number?

(Testimony of Paul J. Ziegler)

The Court: I think Mr. Carr introduced it.

Mr. Strong: I believe it was just for identification.

Mr. Carr: I think it was in evidence.

The Clerk: It was in evidence.

The Court: All right, in evidence.

Mr. Strong: It is in evidence. Thank you.

May I pass it to the jury?

The Court: Yes.

(Document passed to the jury.)

Mr. Carr: Is there any objection, Mr. Strong, as to checks of that kind, substituting a photostatic copy?

Mr. Strong: No objection to substituting photostats of any documents which Mr. Carr wishes to have photostated.

Q. Prior to June 30th or July 1, 1946, as I understood, you were anxious to get sugar for the John H. Ziegler Company? [419] A. Correct.

Q. And you had not gotten any sugar, is that correct, for the John H. Ziegler Company during May or June of 1946? A. I didn't so testify.

Q. I am asking you.

A. I don't believe so, Mr. Strong. If there were any sugar purchases in either May or June, 1946—

Q. Can't hear you.

A. Sorry. If there were any sugar purchases in May or June of 1946, they were not large.

Q. You knew, did you not, that you could not get sugar in May or June, 1946, without a ration check, ration currency? A. Yes.

Q. Was not that the reason that John H. Ziegler Company did not get the sugar you wanted in May or June, 1946?

(Testimony of Paul J. Ziegler)

Mr. Carr: I object to that as being argumentative, your Honor.

The Court: I think it is. Sustained.

Q. By Mr. Strong: What was the reason?

Mr. Carr: That is the same question, your Honor.

The Court: The same question. I will sustain the objection.

Q. By Mr. Strong: You said that you wanted sugar for the John H. Ziegler Company in May and June, 1946?

A. Yes. [420]

Q. You did not buy any? A. Yes.

Q. You bought some?

A. Mr. Carr—Mr. Strong, I am sorry—I answered that question just a moment ago. I don't recall definitely any sugar being purchased in May or June of 1946.

Q. What was the reason?

Mr. Carr: Well, now, I—

The Court: I think he said he does not recall having purchased any.

Mr. Strong: I submit, your Honor, that the witness testified on direct that during these months he was in need of sugar for the John H. Ziegler Company and was trying to make arrangements to get some when rationing went off.

The Court: Yes, he said that.

Mr. Strong: I am asking him why he did not buy any actually in May and June, 1946.

The Court: Well, I will let him answer. I do not think it is very material. You may answer it.

The Witness: Because in May and June, 1946, the OPA was still in existence. Points were then required.

(Testimony of Paul J. Ziegler)

On July 1st the OPA was not in existence. Points were not required.

Mr. Strong: No further questions.

Mr. Carr: Did I understand you are finished?

Mr. Strong: Yes, sir. [421]

Redirect Examination

By Mr. Carr:

Q. Mr. Ziegler, will you please explain this:

Your name appears—I think the jury has those exhibits, but I will refer to them generally.

In two or three instances your name appears where the word “partner” appears after your signature.

Can you give us the explanation for your putting the word “partner” on?

A. There were several reasons why the word “partner” appears.

Q. Well, please give them to us.

A. The principal reason is that the OPA has—had, rather,—a great number of regulations, a lot of which were enforced by clerks in the various—originally the local boards and thereafter the district office. A lot of these papers which were required to be filed had to be filled in on a line below which there was a designation of title; so that something had to be put in there.

I chose the word “partner” in order to avoid having to go back and forth to explain to the clerk or clerks that another title which I might have given myself was sufficient to warrant the filing of the particular paper in mind.

You will understand that these papers which are referred to here are only in part of a stack which would probably be as [422] high as this bench filed with respect to

(Testimony of Paul J. Ziegler)

various OPA regulations during the years between 1943 and 1946.

Q. Incidentally—pardon me.

A. Pardon me. I haven't finished my answer, Mr. Carr.

There is another reason for the use of the word "partner." It was this: that the manufacturing business, which had theretofore been conducted by the West Coast Supply Company, was taken over by me, that is, by the John H. Ziegler Company which is a partnership of my father and myself on February 1, 1944.

From that time on I was a partner insofar as the manufacturing business was concerned. And all of these papers relate to that manufacturing business.

The name of the account, insofar as the OPA was concerned, was never changed. And it was never changed because you had to have an established account with the sugar refiners in order to buy sugar at all in those days, and you also had to have a coincidence between the account which had been established with the sugar refiners and a check for ration points which you gave to them so that the name of the account with the OPA was never changed, either on February 1, 1944, or thereafter. Had it been changed, I wouldn't have been able to buy sugar with points, without points or otherwise.

Therefore, on those papers, for yet that additional reason, "partner," the term "partner" appears. [423]

Q. When you first went down to the West Coast Supply Company I believe you testified you went down more or less in the capacity of a lawyer?

A. Principally, yes.

(Testimony of Paul J. Ziegler)

Q. How much of your time, say, during the latter part of 1943 did you give to the work on OPA and other such matters? What portion of your time?

A. Well, during that period about half my time was divided between working for the OPA itself as a volunteer board member and the other half working for the West Coast Supply Company.

Mr. Carr: I would like at this time to offer in evidence Defendants' Exhibit A for identification which is a registration of retailers and wholesalers. This came from the OPA files, if your Honor please.

Mr. Strong: I will stipulate that it may go into evidence.

The Court: In evidence.

Mr. Carr: And also the same applies to Exhibit B for identification.

Mr. Strong: The same stipulation.

The Court: In evidence.

The Clerk: Defendants' Exhibits A and B in evidence.

(The documents referred to were marked Defendants' Exhibits Nos. A and B and introduced in evidence.)

The Court: Pass them to the jury. [424]

(Documents passed to the jury.)

Mr. Carr: I should like also to pass at this time to the jury the partnership agreement, which is Defendants' Exhibit C.

The Court: It may be passed.

Mr. Carr: Do you want to see it?

Mr. Strong: No. I just want to make sure it is in evidence. Yes.

Mr. Carr: And Exhibit D which is the supplemental letter of partnership agreement, and Exhibit A and B

(Testimony of Paul J. Ziegler)

which are the original registration forms of the West Coast Supply Company.

(Documents passed to the jury.)

Mr. Carr: That is all.

Mr. Strong: Just one or two more questions, your Honor.

The Court: All right.

Recross Examination

By Mr. Strong:

Q. As I understand it, you say that you could not get any ration quota for the John H. Ziegler Company from the OPA?

Mr. Carr: Well, I submit that that is a matter of law. It is right in the regulations that he could not.

Mr. Strong: I want to know whether he was able to get it.

The Witness: I will be—

Mr. Carr: Well, your Honor, he is asking for a legal [425] opinion; and the rules which provide that he could not get it are in Revised Order No. 3.

Mr. Strong: I will reframe the question.

Q. Did you at any time obtain a ration quota from the OPA for the John H. Ziegler Company?

A. I did not.

Q. Did you at any time obtain a sugar ration quota from the OPA for yourself: Paul Ziegler?

A. I did not.

Q. You wanted to get sugar for the John H. Ziegler Company, is that right? A. Correct.

The Court: Yes, he said that many times.

Mr. Strong: Yes.

(Testimony of Paul J. Ziegler)

Q. That, as I understand, was the reason that you put the word "partner" on these documents, including Government's Exhibit 39 in evidence?

Mr. Carr: I submit now that isn't quite accurate, Mr. Strong.

Mr. Strong: I am asking, your Honor. The witness can correct me, I believe.

The Court: Yes. It does not contain all of the explanation, but I will let the witness answer it.

The Witness: May I have the question, please, Mr. Reporter? [426]

(Question read by the reporter.)

The Witness: That is not the reason, Mr. Strong. The reason which I gave you and which you may be referring to so as to make it clear, the reason that in these particular exhibits the term "partner" appears, that is, one of the reasons that it appears, is that in 1944, as of February 1, 1944, when the John H. Ziegler Company was formed, when it started in business as a manufacturer, the John H. Ziegler Company was entitled to have the ration point account of the West Coast Supply Company as an industrial user transferred to the John H. Ziegler Company.

There were various reasons why that was not done, one of which was that if the account, that is, the OPA account of the West Coast Supply Company, had been transferred to me, to the John H. Ziegler Company, then the John H. Ziegler Company would have received from the OPA ration point checks for its allotments as they came up in the name of the John H. Ziegler Company. But the John H. Ziegler Company then would not be able to buy sugar because at that time and for some time be-

(Testimony of Paul J. Ziegler)

fore that the sugar companies were not selling any sugar to anybody who was not an established account of the sugar refiners for a period before that. And they also were not permitted, or thought they were not permitted, to sell sugar to any account different than the account upon which the check for the points which they got was drawn.

The result then would have been that if the account, the [427] OPA account of the West Coast Supply Company, had been transferred to the John H. Ziegler Company, that then the OPA checks and the ration point account of the West Coast Supply Company would have all been in the name of John H. Ziegler Company; and the sugar company would refuse to sell me any sugar, regardless of what points they got at all.

Consequently, the account was not changed and, therefore, at all times after February 1, 1944, all of these papers which pertained to the accounts of the West Coast Supply Company were actually the proceedings with respect to myself, that is, the John H. Ziegler Company; and accordingly when I signed the "West Coast Supply Company," one of the reasons that the name "partner" appears, outside of the reason that that is the only kind of designation that the OPA clerks recognize, is because, in my view, that is what I was; I was a partner in my own manufacturing business with my father.

Q. By Mr. Strong: But these documents you have: do they say any place "partner—John H. Ziegler Company"? A. No, they do not.

Q. You just indicated you are a partner of West Coast Supply Company? A. Correct.

Mr. Strong: That is all.

(Testimony of Paul J. Ziegler)

Mr. Carr: Just a moment. I don't think that—

Mr. Strong: May I show this to the jury? [428]

The Court: Wait a minute.

Mr. Carr: I move that the statement of Mr. Strong be stricken.

Mr. Strong: I don't think there is anything wrong with it.

Mr. Carr: You made the statement that “you just indicated you were a partner of the West Coast Supply Company.”

The Court: Well, the record speaks for itself. I will strike it out at the suggestion of Mr. Carr.

Mr. Strong: May I show these documents to the jury?

The Court: Yes.

(Documents passed to the jury.)

Mr. Strong: No further questions, your Honor.

The Court: That is all.

(Witness excused.)

Mr. Carr: Mr. Schnieder.

JOHN B. SCHNIEDER,

a witness called by the defendants, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: John B. Schnieder, S-c-h-n-i-e-d-e-r.

Direct Examination

By Mr. Carr: [429]

Q. Your occupation, Mr. Schnieder?

A. Economic consultant.

(Testimony of John B. Schnieder)

Q. What is your college background?

A. Graduate in economics from the University of Chicago and also doctor in economics from the University of California.

Q. What do you call yourself? Consulting economist?

A. That is right.

Q. Is that your occupation at the moment?

A. Yes, it is, Mr. Carr.

Q. How long has it been your occupation?

A. I have had a private practice for slightly over two years.

Q. Prior to that time what were you doing?

A. For over 10 years on the faculty of the University of California.

Q. During the past two years have you confined yourself to any particular subject in economics or just generally?

A. Specialized in agriculture.

Q. Now, I will ask you if at my request you made certain research?

A. Yes, I did.

Q. Do you need any material or data with you that you may refer to or need to refer to?

A. I have a summary table of information here. The balance is in my brief case should I need it. [430]

Q. Now, I ask you to ascertain for me and for presentation to the jury and the court for the year 1946 from official documents—and you can specify what those documents are—the available supply of sugar for consumption in the United States in 1946?

Mr. Strong: I object to that, your Honor. I don't think it makes the slightest bit of difference.

(Testimony of John B. Schnieder)

The Court: I shall hear Mr. Carr on it.

Mr. Carr: Well, my point is simply this, your Honor: that we are going to offer this testimony to show that on July 1, 1946, there was no emergency, to-wit, therefore, no authority for the rationing of sugar and that instead of there being a scarcity of sugar there was ample supply in the country and, therefore, no authority for the rationing program insofar as the Third Revised Ration Order No. 3 is concerned, and also in connection with our argument to do with reconversion.

Mr. Strong: If your Honor please, I don't think that it is proper to attack an order with reference to sugar rationing issued by introducing any evidence on a collateral matter in a criminal proceeding. It has nothing to do with this proceeding. The attack upon the rationing order is, to my mind, in a similar class as attacking the classification by a draft board in the prosecution with reference to failure to obey its orders, and it cannot be attacked.

The Court: This is a point to which I have not given any [431] consideration, and I should like to hear an argument on it.

Mr. Carr: I did not hear your Honor.

The Court: I think that is a point to which I have not given any consideration, and I should like to hear some argument on it.

Mr. Carr: Very well, sir.

The Court: Because it is new.

Ladies and gentlemen of the jury, it is now 10 minutes to 12:00. You will remember the admonition I have heretofore given. You will not discuss the matter among

yourselves or permit anyone to discuss it in your presence. You will not form nor express any opinion as to the merits of the controversy until it is finally submitted to you under the instructions of the court.

You will return here at 2:30 so that I can hear an argument on this question that is now before the court.

You may be excused until 2:30.

Gentlemen, you will return at 2:00 o'clock.

(Whereupon, at 11:50 o'clock a.m. a recess was taken until 2:00 p.m. of the same day.) [432]

Los Angeles, California, February 7, 1947, 2:00 P.M.

(The following proceedings were had in the absence of the jury:)

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 19,106, Criminal, United States v. West Coast Supply Company and Paul J. Ziegler for further trial.

Mr. Strong: Ready for the Government.

Mr. Carr: Ready for the defense.

The Court: Mr. Carr, I should like about 15 minutes to give me the theory on the question that was before the witness and the introduction of the testimony which you proposed to offer.

Mr. Strong: May the record show the defendant is in court, your Honor?

The Court: Yes, the defendant is in court.

Mr. Carr: I shall try to do it in 15 minutes, your Honor.

The Court: I want your theory. I want to be sure it is in the record what you propose to do.

Mr. Carr: Yes. First I must refer back to the Second War Powers Act which provides simply that when-

ever the President is satisfied that the fulfillment of requirements for defense of the United States will result in a shortage in the supply of any material or any facilities for defense or for [433] private account, he may allocate such material.

Now, the theory is that that is the specific limitation by Congress giving to the President the power to allocate materials for the defense of the United States, and, of course, based on a shortage.

Our theory is this: that the power no longer exists. It is not in defense of the United States, and further we offer to show by statistical information taken from official documents, to-wit, mainly the Agricultural Department official journal showing in very succinct terms that there was no shortage actually of sugar in the United States. In fact, there was more for per capita use than was needed and that the emergency no longer existed. It was not needed in the defense of the United States. A fortiori the order is invalid.

He cannot be prosecuted at this time. The ration orders, which are based upon that power, are invalid.

I might point this out to your Honor: that Judge Mathes had a case the other day in which he denied bail. This same point was raised, and the matter was taken to the Circuit Court of Appeals, and they granted bail and said there was a substantial matter to pass upon.

This was the specific point that was raised, that is, the emergency had terminated with respect to allocation of sugar.

One other case I should like to point out to your Honor— [434] it will take a moment—is the case of *Chastleton, et al., v. Sinclair, et al.*, 1924, 68 Law. Ed. 841.

I do not have the U. S. citation at the moment. I can get it for your Honor.

This case, I think, is pretty much right to the point involved here. This was an appeal from an order dismissing a bill for injunction filed to restrain the enforcement of an order of the Rent Commission cutting down rents for apartments in the Chastleton Apartment house. The order was made August, 1922, and fixed rates from the preceding first of March. Relief was sought by the bill for injunction on several grounds, the most important of which was that the emergency that justified interference with ordinarily existing private rights in 1919 had come to an end in 1922 and no longer could be applied consistently with the 5th Amendment of the Constitution.

The original Act of October 22, 1919, was limited to expire in two years. It was amended to continue to May 22, 1922. On that day a new act declared that the emergency described in the original title still existed and reenacted the Act of 1919 to continue until May 22, 1924.

The question before the court was whether conditions had so far changed as to affect the constitutional applicability of the law. The court reversed the order of the District Court, dismissing the bill for injunction and held that a law [435] depending upon the existence of an emergency or other states of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed, and that the increased cost of living because of the war will not justify the enactment of a statute regulating rents when the emergency as to housing conditions created by influx of workers to Washington for war purposes has been relieved by the

termination of the war and by the building of additional houses.

The court said at page 843:

"We repeat what was stated in. . ."

And I skip the citations of cases.

". . . as to the respect due to a declaration of this kind by the Legislature so far as it relates to present facts. But, even as to them, a court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared . . . And still more obviously, so far as this declaration looks to the future, it can be no more than prophecy, and is liable to be controlled by events. A law depending on the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed. . .

"The order, although retrospective, was passed [436] sometime after the latest statute, and long after the original act would have expired. In our opinion it is open to inquire whether the exigency still existed upon which the continued operation of the law depended. It is a matter of public knowledge that the government has considerably diminished its demand for employees that was one of the great causes of the sudden afflux of employees to Washington, and that other causes have lost as much of their power. It is conceivable that, as is shown in an affidavit attached to the bill, extensive activity in building has added to the ease of finding an abode. If about all that remains of war conditions is the increased cost of living, that is not, in itself, a justification of the act. Without going beyond the limits of judicial knowledge, we can say at least that the plaintiffs' allegations cannot

be declared offhand to be unmaintainable, and that it is not impossible that a full development of the facts will show them to be true. In that case the operation of the statute would be at an end."

And so we contend here, your Honor, that if the basis, that is, under the Second War Powers Act, of the emergency does no longer exist, this defendant is being tried on an invalid OPA order.

I want to call your Honor's attention to a more recent [437] case which I think probably is applicable, *Gibson v. United States*, that was decided just recently, and I am sure your Honor has probably read that case.

That was a Selective Service case, a more recent Selective Service case, in which the old question came out about a defendant's not being allowed to test in a criminal trial the matter of the arbitrariness of the order which required him to be inducted.

In that particular case after, you will remember, the *Falbo* case and the *Billings* case—those various cases—that first came along, the Supreme Court in which case said that he did not have to report to camp. He could make that defense in a criminal case. In other words, he could raise the question of the validity of the order of induction.

We have here a defendant who is charged with violation of an order which, if valid, I know of no other forum, your Honor, to challenge it except here.

That, in substance, is our position. So we wish to show that, in fact, there was no emergency so far as the rationing of sugar was concerned on July 1, 1946, at the time of the alleged offense.

The Court: The control is still in effect on sugar, is it not, still being rationed today?

Mr. Carr: It still was to be rationed, yes, your Honor.

The Court: But it is being actually rationed, is it not? [438]

Mr. Carr: Physically, yes.

Mr. Strong: Your Honor, the Government rests upon the language of the statute itself.

The Second War Powers Act, Title III 50 U.S.C.A. Appendix, 633, says:

“That whenever deemed by the President . . .”

Discretion, I may interpolate, obviously is vested in the President.

Whenever the President is satisfied that the fulfillment of the requirements for the defense of the United States will result in a shortage of the supply of any material or any facilities for the defense or for private account or for export, the President may allocate such material or facilities in such manner upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

As your Honor has pointed out, sugar is still being rationed. The President, in the exercise of his discretion, as permitted under the Second War Powers Act, has deemed that sugar rationing should continue.

I respectfully submit, in view of the fact that the President has made such a determination through offices duly appointed and who are permitted to exercise those powers on his behalf, that question cannot be tested here.

I think the proper forum—as Mr. Carr says he doesn’t [439] know—is the Congress of the United States. That is the place where a question should be addressed to revoke the President’s power in that respect.

As to the Gibson case, your Honor, the Government does not question the fact that arbitrariness can always be challenged in a Selective Service proceeding.

The Court: What is the citation, Mr. Carr, of the Gibson case? I do not have it in front of me.

Mr. Carr: I have the advance sheet. Let me see if I can give it to you.

The Court: If you can, give me the date of it.

Mr. Carr: It is 91 Law. Ed.

The Court: I have that.

Mr. Carr: Of volume 4 at page 282. It is the October term, your Honor.

The Court: That is very interesting and is a very new question as far as this court is concerned.

Most all of the other questions have been presented in various forms, but this one is entirely new.

Is there any decision in any of the courts that either the Government or the defendant has found with reference to a ruling on this particular question of the sugar rationing? Has it been raised in any court?

Mr. Strong: I don't know of any, your Honor.

Mr. Carr: You mean with respect to the emergency? [440]

The Court: Yes.

Mr. Carr: I don't think there is any decision on it so far as I know. Judge Mathes decided the other way, but the Circuit Court of Appeals overruled him on the bail and held it was a substantial question and granted the bail. But that, of course, is not a final determination.

The Court: Well, the Circuit Court, as you know from your experience as United States Attorney—and this may be stated in the absence of the jury—grants bail in every case.

Mr. Carr: I would say quite a number, your Honor.

The Court: I do not know where they have denied it where bail has been asked for.

This is no reflection on the court. Their duty is to perform their function the same as this court, but my experience is that in every case of which I know every request for bail has been granted. And I think they take the view that this court does: that it is a new and novel and very interesting question.

Let us go one step further. Suppose this court should hold that that was a proper defense? The defendant would then call experts on the economic conditions in the country, not only as to sugar, but I think the scope should be a little wider and include other economic problems with reference to supply and demand.

It should also include, I imagine, commitments that we have [441] outstanding that the court could not ignore with other nations during this world situation of famine which is still a part of the war program.

Is it necessary to go into all those questions? Then it would be necessary for the Government to attempt to meet that issue, if the Government could meet it, by calling a number of experts to show, if they could, a rebuttal of what the defendant contends. It would open up a very wide field of inquiry before this court.

We all know that Congress spent weeks on these questions before the Committees of the Senate and the House, investigating these matters and in determining these powers.

Would we be then invading the province of congressional legislation in determining that economic question, not only of sugar, but of course sugar is tied in with all

of the other controls, some of which have been abandoned and others of which have not?

That is a very broad question. I am very pleased to have it presented because, as I say, it is new; and the defense should present all of its defenses and complete its record so if this court is wrong, this court will be reversed.

I am going to sustain the objection of the Government, and I am going to ask Mr. Carr in the absence of the jury to make an offer of proof because I regard this question new and very important. [442]

Mr. Carr: Shall I make that offer now, your Honor?

The Court: Yes.

Mr. Carr: At this time the defendant, Paul J. Ziegler, offers to prove by the witness who was just on the stand, Dr. Schnieder—this will be very brief, your Honor.

The Court: No, make it as fully, Mr. Carr, as you feel necessary.

Mr. Carr: I think it will only take about three minutes.

The Court: All right.

Mr. Carr: (Continuing)—that the available supply of sugar for consumption in the United States in 1946 was substantially as follows, and if I may I shall just read from a sheet here and give the facts.

Mr. Strong: May I suggest, your Honor, that I have no objection to counsel's introducing that sheet as part of his offer of proof.

The Court: Well, state enough of it, Mr. Carr, in the record so that we can connect it up, then, with whatever summary you have.

Mr. Carr: Yes, your Honor. It is understood, of course, that I am offering to prove that by the witness?

The Court: Yes.

Mr. Carr: And I am now just making the offer of proof as follows:

That the requirements are based upon a 1935-39 average [443] per capita consumption of 96.5 pounds of refined sugar for a population of 139,028,300. That figure—

The Court: What is the per capita, Mr. Carr?

Mr. Carr: 139,028,300. That evidence would show that it was arrived at by a computation, taking the official statistics for 1946 but scaling it down just slightly to try to be absolutely accurate.

The requirements based on that 1935-39 average per capita of raw sugar was 7,173,860 tons. Reduced to refined sugar, it was 6,708,115 tons.

On a per capita percentage basis, the requirements of raw sugar were 103.2 pounds per person; on a refined basis, 96.5 pounds per person.

In 1946 the actual consumption of raw sugar was 5,645,913 pounds.

The refined actual consumption, that is, tons—and I am speaking with reference to short tons—was 5,276,554 tons; actual consumption per capita, raw, 81.2 pounds per person; actual consumption on a refined basis, 75.9 pounds per person.

We offer to prove that the evidence will show as to raw sugar not used of the total, which we will call a deficit, was 1,527,947 tons.

As refined sugar that would show that there was, in addition to actual consumption, or a deficit, 1,431,561 tons, or per capita there was 22 pounds of raw sugar which was not [444] used, available but not used.

Of the refined sugar there was 20.6 pounds per capita on the same basis. That is the refined.

Now, the controlled coupon sugar allocated to other countries but controlled by the United States was 1,619,000 pounds—that is raw—and 1,513,084 pounds refined. That represents 23.3 per capita, that is, on a pound basis in raw sugar; and 21.8 pounds per person on a refined sugar basis.

Now, adding those figures that I have just read to the actual consumption, which was on raw sugar, 5,645,913 tons, you get a total of 7,264,913 tons of raw sugar which were available. On the refined basis you add the above figure of actual consumption heretofore given of 5,276,554 tons, and you get a total of 6,789,638 tons which was available for consumption.

On a per capita basis you add the same percentage in the same way; your Honor; and on a raw basis you show available for consumption 104.5 pounds per person.

You show on a refined basis there was available 97.7 pounds per capita.

Now, just one further break-down and we have finished.

If you add the U. S. consumption and the U. S. controlled coupon sugar, you have a total of 7,264,913 pounds which gives you a total available to the United States of 7,577,424 tons—that last statement should have been tons of raw sugar.

The Court: Tons for both? [445]

Mr. Carr: Yes.

The Court: All right.

Mr. Carr: And if you add the refined tons on the same basis, that is, 6,789,638, you get a total tonnage of refined sugar available in 1946 of 7,081,705 tons. And if you add your percentages, you find that you have available per capita in the United States in 1946 109 pounds of sugar per person, that is, raw, or on a refined basis

you have 101.9 pounds of refined sugar available per person.

These figures were based upon data taken from the 1945 Agricultural Statistics, Bureau of Agricultural Economics of the United States Department of Agriculture, page 93; and all of the facts or all of the data would be submitted as having been obtained from the official journals or departmental, I suppose, reports by the Bureau of Foreign and Domestic Commerce and the United States Department of Commerce and the Agricultural Department.

I do not think I need designate each one of those.

So that the proof, we would hope to present, would be to the effect that while there was only 75.9 pounds per person used in the United States in 1946, there was actually available 101.9 pounds, showing that there was no actual shortage of sugar.

Mr. Strong: May I see that a moment, Mr. Carr?

Mr. Carr: I want to add about four other figures, your [446] Honor.

The Court: All right.

Mr. Carr: I think I will just take two years instead of taking several years.

I should also like to offer to prove that in 1944 the total beet and cane sugar production for use in the United States—that is 1944—was 7,635,000 tons;

That in 1946 the production for use in the United States was 7,835,000 tons; and that in 1947—no, that is after.

The Court: You could not have 1947 yet.

Mr. Carr: I meant on the basis of the first few months, but I won't offer that.

The estimated consumption, estimated United States consumption, by civilians and use by military and war services, Lend-Lease and other exports—I will just take two years—were as follows:

1944 it was 7,513,000 tons, whereas in 1946 it was only 5,565,000 tons.

One other thing, your Honor, one further break-down:

We expect to prove that in 1944 civilian use, tons of sugar, was 6,158,000 tons, and other uses, which includes mostly the military, Lend-Lease and what not—it is all military—would be 1,355,000 tons; and for 1946 the civilian use was 5,400,000 tons, but for other use 165,000 tons.

Mr. Strong: The Government objects to the entire offer [447] of proof, your Honor.

Mr. Carr: Well, that has already been sustained.

The Court: Yes. But we have the record complete and the record shows that the Government objects.

Call the jury.

Will counsel give me now about how much more time for evidence, both rebuttal and defense?

Mr. Carr: We are just about through, your Honor.

The Court: How much more time?

Mr. Carr: Very few minutes.

The Court: And rebuttal?

Mr. Strong: A very few minutes for rebuttal.

Mr. Carr: Before you bring the jury in, your Honor, if you will give me about a minute, we might save time.
(Brief pause in the proceedings.)

Mr. Carr: I think we could save time at this moment and rest the defendant Paul J. Ziegler's case, and I should like to present some motions, your Honor.

The Court: All right.

Mr. Strong: Before the rebuttal, your Honor?

Mr. Carr: Yes, certainly.

Mr. Strong: I have no objection. I am just inquiring.

The Court: The case is not in yet.

Mr. Carr: Well, I want to renew my motion.

The Court: Oh, yes, I shall give you plenty of time. [448]

Mr. Carr: Now, at this moment I am not sure about the new rules, your Honor. You know when we travel from one set of rules to a new set of rules, a lawyer can very easily make a mistake.

The Court: Yes.

Mr. Carr: The old practice was that you had to renew your motion at the end of the defendant's case.

Now, just in an abundance of precaution, I want to renew the motions which I have heretofore made and move the court to enter an order or judgment of acquittal as to both of these defendants on each and every count of the information.

Now, I won't at this moment, if you do not want me to, recap some of the problems. But I certainly do want to insist, that in view of the position of the case, that the West Coast Supply Company certainly ought to go out at this time because there is no evidence to support conviction if the jury brought in a conviction in the case of the West Coast Supply Company. And the rebuttal can rebut nothing, but at this moment I think that at least we ought to dispose of that and I should like the privilege of renewing the objection, I mean the motion, even if there was rebuttal.

The Court: Oh, I shall certainly grant that. It is the opinion of the court that the motion should be made at the conclusion of all of the testimony, but out of an abundance of caution it is well, as Mr. Carr has done, to make the motion [449] at this time.

For that reason they will be denied without prejudice, and the defendant may renew them at the end of the testimony.

It will be understood that all of the objections which the defendants have made at the close of the Government's case are now in the record at this time.

Mr. Carr: Yes.

The Court: Overruled, exception allowed.

Call the jury.

(The jury returns to the court room at 2:33 o'clock p. m.)

The Court: Stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: And the defendant is in court?

Mr. Strong: So stipulated.

The Court: Mr. Carr?

Mr. Carr: Yes, I do. I am sorry. I thought I said it, your Honor.

The Court: All right.

Mr. Strong: Does the defendant rest?

Mr. Carr: I believe we stated we did, yes.

The Court: All right. Let the record show the defendant rests.

Mr. Strong: Mr. Leland. [450]

REBUTTAL

ALBERT F. LELAND (Recalled)

a witness for the plaintiff, having been previously sworn, was recalled and testified further in rebuttal as follows:

The Court: State your name, please.

The Witness: Albert F. Leland.

The Court: You have been sworn, have you not, Mr. Leland?

The Witness: Yes, sir.

The Court: All right, proceed.

Direct Examination.

By Mr. Strong:

Q. You testified in this trial before?

A. Yes, sir.

Q. And you represent a sugar brokerage house?

A. I represent a brokerage house who handles sugar among other items.

Q. What house is that again?

A. Mailliard & Schmiedell.

Q. During June and July of 1946 were you refusing to sell sugar to anybody except customers already on the books of Mailliard & Schmiedell?

Mr. Carr: Objected to as being not proper rebuttal, immaterial, no proper way to present the rebuttal in the case. [451]

The Court: In view of the testimony, I think I shall allow the witness to answer.

The Witness: Will you state that question again, please?

The Court: Mr. Reporter, read it, please.

(Question read by the reporter.)

(Testimony of Albert F. Leland)

The Witness: No, we were not. We were selling sugar to any concern we could do business with that had ration evidence.

Mr. Strong: That is all.

Mr. Carr: That is all.

The Court: That is all.

Mr. Carr: Just a moment. Just a moment.

The Witness: I beg your pardon.

Cross Examination.

By Mr. Carr:

Q. You were not even selling sugar at all, were you? You were a broker?

A. Well, we are sales agents for Union Sugar Company.

Q. When you say that you were not selling it, why, all you did was act as an agent for the Union Sugar Company?

A. We were the sales force for the Union Sugar Company in Southern California.

Q. And you say now you would sell anybody in 1946?

A. Anybody that I knew and did business with and had ration evidence. [452]

Q. Why did you write "West Coast Supply Co." into that check?

A. I didn't write "West Coast Supply Co." into that check.

Mr. Strong: I don't think that is proper, your Honor.

The Court: That is proper. If anything has not been cleared up, I shall permit it to be cleared up.

Mr. Strong: Yes, sir.

Q. By Mr. Carr: Well, you remember the name "West Coast Supply" was put in on the check?

A. Yes, sir.

Mr. Carr: That is all.

Mr. Strong: That is all.

(Witness excused.)

Mr. Strong: Mr. Barry.

JAMES R. BARRY,

a witness for the Government, having been previously sworn, was recalled and testified further in rebuttal as follows:

The Clerk: You were heretofore sworn.

The Witness: Yes.

The Clerk: You are Mr. Barry?

The Witness: Barry.

The Court: James R. Barry. [453]

Direct Examination.

By Mr. Strong:

Q. What concern do you represent?

A. Parrott & Company.

Q. You testified here before? A. I did.

Q. During June and July, 1946, was your concern refusing to sell sugar to anybody except the customers already on the books?

Mr. Carr: Objected to as not proper rebuttal for the reason, first, that there is no testimony in the record by Mr. Ziegler to that effect in 1946. The only testimony is with reference to 1943 and '44.

I am quite sure I am right about that. He is rebutting something that never existed in the case.

(Testimony of James R. Barry)

The Court: Is that your understanding of the evidence?

Mr. Strong: No, that is not my understanding of the evidence. I understood Mr. Ziegler to testify as to the reasons why all of these transactions were taking place the way they did in July, 1946, was that the only way that you could get sugar from a sugar company was if you were an old customer on their books and that you could get it any other way. That is the reason he put the words "Partner—West Coast Supply Co."

Mr. Carr: That was back in 1944 when he put the word [454] "partner" on there, your Honor.

The Court: I have extensive notes, but I am not sure. It will not be difficult. It is not necessary to read the evidence on this one point.

Mr. Strong: I may save time, your Honor, by stating that if counsel will stipulate that the testimony as given applies only to 1945 or some period before July, 1946, I will withdraw this witness.

Mr. Carr: I don't want to take the burden. That is my recollection. I think it would be improper for me to do that. It is my understanding of the testimony it was.

The Court: All right, gentlemen. It won't take long to find it.

(The testimony of the defendant Paul J. Ziegler was read by the reporter as follows:

"A. . . There is another reason for the use of the word 'partner.' It was this: that the manufacturing business, which had theretofore been conducted by the West Coast Supply Company, was taken over by me, that is,

(Testimony of James R. Barry)

by the John H. Ziegler Company which is a partnership of my father and myself, on February 1, 1944.

“From that time on I was a partner in so far as the manufacturing business was concerned, and all of these papers relate to that manufacturing business. The name of the account, insofar as the OPA was concerned, was never [455] changed; and it was never changed because you had to have an established account with the sugar refiners in order to buy sugar at all in those days, and you also had to have a coincidence between the account which had been established with the sugar refiners and a check for ration points which you gave to them so that the name of the account with the OPA was never changed either on February 1, 1944, or thereafter. Had it been changed, I wouldn't have been able to buy sugar with points, without points or otherwise. . . .”)

Mr. Carr: That is it. I still contend that I am right, if that is it.

The Court: Read the first part of it. It might give us an inkling.

(The record referred to was read by the reporter.)

The Court: Well, that does answer the question in my opinion.

Mr. Strong: Or thereafter, and the entire question is as to the use of certain documents on or about July 1st.

The Court: Yes.

Mr. Strong: In explanation of why the John H. Ziegler Company was not buying sugar and did not have any ration stamps this entire line of evidence went in, and in connection with that this witness was indicating by the answer to that question [456] that at this time he filed the papers or at any time thereafter he could not have

(Testimony of James R. Barry)

gotten any sugar if he was operating and buying under the name of John H. Ziegler Company and that is why he had to remain under the name of "West Coast Supply Company." That is why he says he never changed the name.

I want to show that you could buy sugar in June and July, 1946, regardless of what your name was if you had ration points and if you had the money. And it did not make any difference whether you had an account there or not.

The Court: But I think the defense also showed that at no time any contention was made that the John H. Ziegler Company had any ration points as a company. Is that not true?

Mr. Carr: That is right.

The Court: If they never had any ration coupons as a company, they could never have purchased any sugar.

Mr. Strong: Your Honor, as I understand the answer, he was giving an additional reason besides the ration points, the additional reason being that you could not get sugar if you were not an established account.

I want to show that you could get sugar in June and July, 1946; and that if the John H. Ziegler Company had any ration points, the mere fact that they were not an established account would not have prevented them from getting sugar. They could have obtained sugar.

Mr. Carr: But the trouble is Mr. Ziegler's testimony says [457] "in those days." Maybe I am in error, but as I understand it, Mr. Ziegler was talking about in those days back in 1944. There is no indication from that testimony that he was referring to 1946.

(Testimony of James R. Barry)

Counsel is now trying to bring that time up to 1946 and then rebut it, it seems to me, your Honor.

The Court: I do not believe, counsel, that—

Mr. Strong: Well, I will accept your Honor's ruling, of course.

The Court: I believe that that is not material, and the testimony of the defendant is that he makes no claim that the John H. Ziegler Company at any time had any ration points.

Proceed to the next question.

Mr. Strong: I have no further questions.

Mr. Carr: May I move to strike the testimony of this witness and the preceding witness, Mr. Leland, because of your Honor's ruling, because the other witness's testimony was based on the identical proposition as to the confusion in dates.

Mr. Strong: Yes, my question was directed toward the understanding of the evidence and the testimony of the previous witness was intended to cover the same point that I am covering with this one. If your Honor strikes his testimony, the other should go out also.

The Court: The motion of the defense shall be granted [458] and the jury instructed to disregard the testimony of both witnesses who have appeared on the stand this afternoon. That is all.

Mr. Strong: At this time, your Honor, without renewing my grounds, or anything, without making any further statement, I move to apply all testimony and exhibits heretofore introduced against Paul Ziegler also as against the defendant West Coast Supply Company.

Mr. Carr: Do I need to state the grounds for my objection, your Honor?

The Court: Just a moment. I want to find out where we are going from here as to our time.

Mr. Strong: I will rest at this point, your Honor.

The Court: How long does the Government and how long does the defense wish to argue the case to the jury? If you will give me some idea of that, I can properly determine the time for the balance of this case.

Will the Government give me some idea?

Mr. Strong: I would say about 45 minutes, your Honor, and about 10 minutes for closing.

The Court: You want about 45 minutes.

Mr. Carr, what do you feel you should have for proper presentation to the jury?

Mr. Carr: Did you say 45 and 10?

Mr. Strong: Yes. [459]

Mr. Carr: That is 55.

The Court: Yes, that is one hour, we will say, that the Government has asked for.

Mr. Carr: I don't know how much I will use, your Honor. I want to have some leeway.

The Court: I want it properly argued, gentlemen.

Mr. Carr: I don't want to crowd myself on the argument. I should like to feel free to have at least an hour and a half to an hour and three-quarters. I doubt if I will use the whole time, but I don't want to be perspiring under any last minute rush.

The Court: What I am trying to arrange, gentlemen, is to get the arguments, if I could, all in one session. I dislike to break up the arguments, and if we allowed an

hour and a half on each side, and if either side did not take up an hour and a half, we could get the arguments all in at one session.

That is the only matter with which I am concerned now: to arrange the time for the finish of the case.

I could not do it this afternoon without having just part of the argument.

Mr. Carr: Your Honor, I had some additional motions, you know.

The Court: I am not considering those at all. I am just considering the arguments to the jury. [460]

Mr. Carr: I see.

Mr. Strong: Well, I don't see how I can cut off much time from the 45 minutes.

I always find that if I say 30 minutes, I start crowding myself at the end; and sometimes if I say 45 minutes, I only take 30. There is some elasticity there. But it certainly won't be more than 35 or 40 minutes for the entire thing.

For the closing, since the defense is taking about an hour, I should have at least 10 minutes in closing.

The Court: The defense has asked for more time than that. The defense has asked for 15 minutes more than I thought they could probably conclude the argument in.

Mr. Carr: What did you have in mind?

The Court: An hour and a half.

Mr. Carr: I probably could do it. If I got toward the end, your Honor would be tolerant?

The Court: The only trouble is if I am tolerant, the other side will want me to be tolerant, too.

Mr. Carr: I shall try to confine myself to an hour and a half. I am sure I won't go over an hour and a half.

The Court: Lincoln made a great speech in 12 minutes.

Mr. Carr: There is a great difference between myself and Lincoln, both in height and style.

The Court: Well, all the argument will take some little time this afternoon, not a great deal, after which I think we [461] should take up the instructions, gentlemen. What I feel is the most expeditious way to handle this matter is to have the jury come back for the arguments and get them into one session.

Monday morning, of course, is always reserved for law and motion and setting of cases in this court. It is a rather crowded calendar usually. That takes the forenoon. I thought the jury would be better rested, and I should like to have the arguments then Monday afternoon and instruct the jury Tuesday morning.

Mr. Carr: I think that would work out very well, your Honor.

Mr. Strong: That is satisfactory, whatever your Honor says.

The Court: Well, we shall not crowd everybody that much. Otherwise I would have to keep the jury here until 6:00 o'clock or after, and I do not like to impose on the jury in that way; and I see no necessity for it.

The other matters are just matters of law until we get to the instructions.

Then we will agree on an hour and a half, gentlemen, for each side. You do not have to take all of that time; but if you do, I shall permit you to take an hour and a half on Monday afternoon.

Ladies and gentlemen of the jury, Saturday is a vacation day in the courts. Monday morning we have other matters always [462] on our calendars, what we call law

and motions, and matters of pleadings to be discussed, bills of particulars and other things in other cases. So the lawyers come here for that purpose.

Therefore, we could not have a session Monday morning. So with the consent of the Government and the defense, at the suggestion of the court I shall call you back at 2:00 o'clock on Monday. I think it perhaps would be better at 1:30 because we would be sure to get the arguments in and that would not press you so near to 5:00 o'clock.

I shall call you back when we recess today, which we will do immediately, at 1:30. The balance of the afternoon will be devoted here to legal matters involved in the case and to preparing the court's instructions for you which I will discuss with counsel for both sides.

The recess being rather long, may I again please call your attention to the admonition of the court. You will not discuss the matter with each other; you will not discuss it with anyone else or permit anyone to discuss this matter in your presence, and particularly you will not express or form any opinion at this time as to the merits of this controversy, which side is right or wrong.

I particularly emphasize that because, as I said in the beginning last Tuesday, the arguments of counsel are important. One counsel may call your attention to some exhibit or some [463] evidence that might possibly change your view of some part of the evidence; and you should not make up your mind then because you must get the law that applies to this case. Then after that is submitted to you under the instructions of the court, it is your duty then to determine a verdict that is fair to both the Government and to the defendant.

I am sure you will keep that admonition in mind. I mention that because in one instance we were trying a land case. During the week end one of the jurors decided to go and look at all the different pieces of land, where they were, and get people to tell the juror about the land and the value of it.

You see, that violates all of the proper procedure in court because the other attorneys have no way of knowing what is in that juror's mind. That juror absolutely violated a direction of the court.

You will now be in recess until 1:30 on Monday afternoon.

(Whereupon, at 3:00 p. m. the jury was excused to return at 1:30 o'clock p. m. Monday, February 10, 1947.)

(The following proceedings were had in the absence of the jury:)

The Court: Is there any objection by the Government or the defense to the statement of the court?

Mr. Carr: What was that, your Honor?

The Court: Is there any objection to the statement of the court? [464]

Mr. Carr: No, your Honor.

Mr. Strong: None, your Honor.

The Court: All right.

Mr. Strong: In connection with the motion I just made, may I just say a few words?

The Court: Yes.

Mr. Strong: I know the view which your Honor has already expressed in this matter, but I should like to add these thoughts with the hope, of course, that they will cause your Honor to change his view.

The concepts of responsibility of partners to each other, one for the acts of the other, whether they be civil or criminal, should have no place in the consideration of this motion whatsoever for this reason: that the ordinary concept of partnership simply recognizes that the only individuals who can do any acts are the humans, the partners. The name is simply a fictitious name used to describe the group which is operating as a partnership.

However, where the statutes, as in the case of the Second War Powers Act, specifically provide that a partnership is an entity for the purposes of violation or action in any way that a person under this law can be a partnership, that places the partnership entity, which is known here as the West Coast Supply Company, in precisely the same category as though it were a corporation under ordinary law. And here where there are three [465] individuals as partners, there are not only three persons who can violate the law, but there are four, each of the individuals being one of the persons and the partnership separately and apart from the three persons being another individual who can violate that law.

If the partnership as an entity can violate the law without regard to the acts of the partners, then obviously it is the act of some other person who can cause that violation since the partnership can perform no act of its own except through an human agency; and that would be an agent or anyone acting on behalf of the partnership.

The same rules, as I said, should apply here in determining criminal liabilities as applied to corporations and for exactly the same reasons. The corporation as an entity cannot act through the agency of some individual, and of course I need not go into the law as to the holding of a corporation guilty for the act of the various mana-

gerial officers and various supervisory officers, as well as the acts of the directors.

Here the partners are, in effect, as far as this statute is concerned and as far as criminal liability is concerned, in my opinion, in no different place than the stockholders of a corporation. The mere fact, of course, that a stockholder of a corporation did not authorize the act of one of the agents of the corporation has absolutely no relation to the question of whether the corporation is itself, as an entity, guilty of [466] a criminal offense when that act, whatever it is, which is the offense committed, is by a responsible agent of that corporation.

So that here in my opinion we have the same sort of situation. We have the partnership, West Coast Supply Company, a separate entity and standing on a par and on the same footing for the purpose of determining criminal liability as does a corporation. And I think the only question to be considered is whether the acts of Paul Ziegler are the acts of the entity, West Coast Supply Company, just as would be considered the acts of any managing officer or of any official of a corporation the acts of the corporation itself.

If your Honor agrees to view the question in that light, then I submit that the evidence here is sufficient to show, at least it is sufficient to go to the jury to have the jury determine as to whether or not the acts of Paul Ziegler were the acts of a person who had definite managerial and supervisory and official capacity to act on behalf of the entity, West Coast Supply Company; and if they determine it in the first instance that his acts are such as could be binding upon a separate entity, then they should determine whether his acts are acts of a violator of the law, in which case the entity is criminally responsible.

The Court: I have given this matter very serious consideration, when the matter was presented before, and stated my [467] view of the law from the bench. Yesterday during recess I had occasion to examine the authorities and presented authorities to counsel which sustained my position very clearly; the argument that the Government makes now would be a very forcible argument if this were a civil case holding the partnership liable for any acts of one of the partners.

But here this is a criminal action, and greatest care must be taken not to involve and to attempt to hold the partnership entity liable criminally for acts that the evidence does not disclose the partners who have been named had any knowledge of, and there is no evidence that the other partners of the West Coast Supply Company had any knowledge at all of these acts, whatever they were, whether the jury finds them to be irregular or not.

Secondly, there is no direct evidence here that the defendant, Paul J. Ziegler, was a partner. The acts which he performed in civil law probably would be sufficient, although it would be a very close line to establish his connection as a partner with the West Coast Supply Company.

The court feels that no case has been established against the West Coast Supply Company or the other members of that partnership. The relationship between that company and Mr. Paul J. Ziegler, under the evidence, is a matter for the jury under the testimony and the exhibits that have been placed in evidence. [468]

The testimony and the exhibits will be limited, therefore, to the activities and acts of the defendant, Paul J. Ziegler.

The court will deny the motion of the Government to permit these exhibits to apply to the West Coast Supply Company. The court, under the evidence, will dismiss the West Coast Supply Company.

Mr. Carr: May I address the court?

The Court: Yes.

Mr. Carr: Under the rules—

The Court: I was just going to reach for them.

Mr. Carr: I would prefer that your Honor follow that new rule because I don't know what the circuit is going to say about an interpretation of that rule. It says it should be an entry of a motion of judgment for acquittal.

The Court: That is right. That is what the rule is.

Mr. Carr: Shall I read it to your Honor or pass it up to you?

The Court: The court, after hearing the evidence, will direct a verdict of acquittal against the West Coast Supply Company.

I think it is Rule 27, Mr. Carr, is it not?

Mr. Carr: Here it is, Rule 29.

The Court: 29. Well, I had it in mind.

Mr. Carr: It reads:

“Motions for directed verdict are abolished. Motions [469] for judgment of acquittal shall be used in their place. The court on motion of a defendant or its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence. . . .”

The Court: Well, I have made that order.

Mr. Carr: That is, as I understand it, as to each and every count, your Honor?

The Court: Yes, that is right. And you want to renew your motion, Mr. Carr?

Mr. Carr: Yes. Your Honor's ruling is that the judgment of acquittal is now ordered entered in the case of the West Coast Supply Company on each and every count?

The Court: That is correct.

Mr. Carr: So then I shall address myself to the matter of Paul J. Ziegler.

Now, if the court please, I want, even if I have to presume a little upon the court's time, to very vigorously and as strongly as I can direct the court's attention to the proposition to which I am going to address myself.

First I will move that the court enter a judgment of acquittal on each and every count of the information, to-wit, eight counts, insofar as the remaining defendant, Paul J. Ziegler, is concerned, based upon the grounds:

First, that the information does not state an offense;
[470]

Secondly, that there has been a complete variance of the proof with the allegations of each and every count of the information;

Third, that the evidence is wholly insufficient to support a verdict of guilty on any of the eight counts of the information.

Now, specifically I have rather hurriedly touched some points, your Honor; but I want to point out to the court that we are here on one simple charge: the very specific allegation in this information.

Count One suffices to take care of the odd-numbered counts, One, Three, Five, Seven and, of course, Count Two represents Two, Four, Six and Eight insofar as the argument is concerned. The same problems obtain.

If the court please, this is a specific charge that is laid on a specific section of the Revised Ration Order No. 3, to-wit, 15.7 (d).

That provision has to be related, though, to the rest of the order; in other words, we have a situation where Congress has authorized the allocation of materials and said to the President, "You may set up an agency; and anyone who violates a rule or a regulation, once it is promulgated, shall be guilty of an offense, and so forth."

Now, the OPA has set up various requirements and various regulations. And among other things it has said, that no check [471] may be issued for an amount larger than the balance in the account on which it is drawn, less the amount of outstanding checks.

The elements of that offense are very simple, your Honor. But they are many.

First of all, the check cannot be issued, and the check is an OPA check. It does not mean just any kind of check. It has to be a check as defined by the regulations for an amount larger than the balance in the account on which it was drawn.

We take this information break-down and we find the charge that the defendant willfully issued and caused to be issued a sugar ration check.

The evidence now is such that I respectfully submit that there is not one iota of evidence in the record to show that a ration check has been issued as defined by paragraph (5) of Section 24.1.

It specifically says a ration check has to be a check, your Honor, drawn by a depositor. It has to be a depositor.

There is absolutely no evidence to show that Paul J. Ziegler is a depositor. There is a complete variance at

that point in the allegation. There is no proof that this is a sugar ration check within the very meaning of the definition of this revised ration order.

In the second place, the evidence shows conclusively that it was not drawn on the account of the West Coast Supply [472] Company. There isn't one doubt about that, your Honor. The check was signed "Paul J. Ziegler." "West Coast Supply Co." is something that got onto that check after it left his hands.

The Revised Ration Order says in paragraph (15) of Section 24.1:

"'Issue' when used with respect to a check, means the delivery of a complete check. . . ."

So the word "issue" in this count is not sustained by the evidence. There has been no issue of the check within the very terms of the ration order. We cannot just segregate, your Honor, Section 15.7 (d) and let it stand alone. It has to stand in relation and juxtaposition to the rest of the various rules of this ration order, just the same as the crime of murder must stand in relation to other settled rules of criminal law.

Taking that count of the information you have a complete variance. It is stated in the information that it was drawn by the West Coast Supply Company. There is a variance there. There is absolutely no proof to sustain, in my opinion, at this time substantial evidence that it was drawn by the West Coast Supply Company. The Government has failed completely in that regard.

It goes on and falls down in another particular:

" . . . on the Union Bank and Trust Company of Los Angeles, when the West Coast Supply Company had a balance in its [473] account at said bank in an amount insufficient to cover the amount of said check."

There is no relationship between the allegation of this information and the evidence because the West Coast Supply Company had nothing to do with this check, had nothing to do with the issuance of the check. It is not an OPA check at all. It is not a violation and cannot be on the evidence.

That is my opinion, if the court please.

That takes into account both a break-down of the information and a break-down of the evidence. I contend very strenuously that the Government, insofar as Counts One, Three, Five and Seven, has failed wholly to establish one material allegation of the information and, as a matter of fact, there is a complete variance in the proof and it warrants a judgment of acquittal being entered at this time.

With respect to Count Two, until the defendant takes the case, I believe the cases hold, the Government cannot fail in the case on its prosecution, that is, on the Government's case, and then make a case afterwards on the defendant's case.

The rule is, as I understand it, if there was no case when the Government rested, then the motion should be granted.

Now, let us take the situation, your Honor, at that time. There was not one iota of evidence that Paul Ziegler had ever received one pound of sugar. There was evidence, and it is documentary here, showing that the West Coast Supply Company [474] received the sugar.

In the second place this count alleges that it was an exchange for a sugar ration check. I do not need to repeat my argument there because under these very rules and regulations and the definition, there has been no check issued. Incidentally, in that connection "an account"

means under paragraph (1) of Section 24.1, Revised Ration Order No. 3:

“ . . . account carried by a bank, in which the bank keeps a record of deposits”

There has been no account established here upon which this particular ration check is drawn. I won't repeat that again.

There was no ration check, and it was not issued by the defendants. It was not issued by this defendant, Paul J. Ziegler, because it could not be issued in the light of those provisions I have read, plus the added provision concerning alteration.

I want to very specifically call your Honor's attention to this section because I think this section, irrespective of the others, is absolutely binding and controlling.

Section 15.7 says:

“A check may be issued only by a depositor. . . .”

Now, mind you, we are not being charged with a violation of that statute. We are being charged with an overdraft.

Mr. Ziegler was not a depositor, and the proof so proves: [475]

“ . . . only by a depositor and only for the purpose permitted and with the effect prescribed by Revised General Ration Order 5. . . .”

Maybe that was a violation of that particular section, but he is not on trial for that.

It goes on to define how checks shall be issued and postdated checks are prohibited; overdrafts are prohibited. This whole section 15.7 relates to offenses against whom? Only depositors, only people who actually have accounts.

There are many other rules and regulations which have to deal with punishing those people who violate the various ration rules and regulations.

When we come to (f) of Section 15.7, which is a limitation on this whole section, it says:

“Altered or mutilated checks. (1) no check which has been altered, (except as authorized in sub-paragraph (2) of this paragraph), mutilated or partially destroyed, or which contains an erasure, may be issued, transferred or deposited. A person who holds such a check shall return it to the issuer with a request for a new check . . .”

In other words, Mr. Ziegler cannot be guilty of issuance of that check within the meaning of that section because the person who issued the check, insofar as the rules are concerned, contemplates those people who issued it with an alteration. It was not an issue of a check because it was not a completed [476] check when it left Mr. Ziegler's hands.

When it left his hands and it was altered by the parties who had those checks, it cannot be a check with an overdraft within the meaning of paragraph (d) of that same section.

In that connection the provision sets up what should be done in case the check is altered. The man must return it back to the original person who wrote the check, and if a check is to be issued at all, a new check must be issued.

I submit, if the court please, that the theory of this case from the very outset has been that if he can fire a shot and it hits the section, that is a violation. But we are not here to defend except on two specific charges. One is a charge under 15.7, and the other is a charge of

a ration order which incidentally I have never located yet, Order No. 8, 2.9. I called the OPA and I have tried every way in the world to get one of them, but I have been unable to find one. I don't think Mr. Strong has one.

Mr. Strong: There is one in the library, your Honor. It's always been there.

Mr. Carr: If the court please, I submit that the evidence is wholly insufficient to put Mr. Ziegler to the jury. And on top of that there is such a variance in the proof that the information cannot stand up as pleading, and that there is not charge against him at the moment which would support a verdict of this jury even if they brought in a verdict. [477]

The other point I must take up for a moment is on the reconversion. I have argued that, and I am not going into it in great length. But we have this situation:

We have to prove in this case that Paul J. Ziegler's business is an industrial plant; it is a small business operation. We have the testimony that, I think he said, they had 20 or 30 employees within the very terms of that act.

The reconversion act was set up because (and I think I know why Congress passed that act) some of the big people seemed to be running the programs and it seemed to work out that big business got the benefit somewhere along the line.

This act says, your Honor, and I just want to read, of course, keeping in mind it is a non-war use, and ending that sentence it says, speaking with reference to allocation of materials:

“. . . and shall not be made dependent upon the existence of a concern or the functioning of a concern in a given field of activity at a given time. . . .”

In other words, Congress wiped out the historical base which OPA had set up in these very regulations for small business and said, "From now on you shall not say to a new business, 'you cannot have sugar simply because you were not in business prior to this time, but you must give them sugar and you must eliminate your rules and regulations which say you must have an historical base.'" [478]

I should like to read Section 1659, two short paragraphs of the War Mobilization and Reconversion Act. They are very short.

"(a) Whenever the expansion, resumption, or initiation of production for nonwar use is authorized, on a restricted basis, by any executive agency"

And mind you this is back in 1944.

". . . having control over manpower, production or materials, the restrictions imposed shall not be such as to prevent any small plant capable and desirous of participating in such expansion, resumption or initiation of production for nonwar use from participating in such production.

"(b) Whenever such executive agency allocates available materials for the production of any item or group of items. . . ."

And here we have a defendant charged in an information which sets up as a basis regulations predicated on the theory that a small business plant cannot have sugar except on an historical basis, directly in the teeth of the Act of the Congress.

I submit, if the court please, that every item of this ration order, Revised Order No. 3, is straight into the teeth of that act and invalid and cannot support an information or a conviction. [479]

The constitutional problem I told your Honor. I believe I have argued the emergency proposition under the Chastleton case. I made the offer of proof there.

I believe we have made the contention that the emergency did not exist and the further contention that the act says "for defense" and that now in 1946 the allocation of sugar was not for defense. But the main thing I want to come back to for just one word is this:

That there has been a complete variance in the proof in this case, and there is no evidence to support the Government's case: the fact that Ziegler ever received a pound of this sugar.

And I submit, your Honor, respectfully submit, that this is the proper posture of the case, to instruct the jury or rather under the new rules to enter a judgment of acquittal.

The Court: The motion will be denied and exception will be allowed the defendant.

Will you bring in the instructions from my desk?

Mr. Strong: May we have a five minute recess before we start? I don't think we had an afternoon recess.

The Court: Do we need a recess?

Mr. Strong: I do.

The Court: All right.

(Brief recess.)

The Court: Let the record show that the jury is not present and that the attorney for the Government and the [480] attorney for the defendant are present.

I have read the proposed instructions by both the Government and the defendant, gentlemen.

We will first consider the instructions offered by the Government.

Mr. Carr, will you please let me have your objections?
I shall make one or two observations.

On page 11—the pages are not numbered by the Government; so I have numbered them from 1 to 14, inclusive—in the second paragraph, of course it is improper for the court to instruct the jury with reference to the penalty.

Mr. Strong: Yes. That is a mistake, your Honor. It should be out.

The Court: Certainly. So there will be stricken from that second paragraph the words:

“ . . . and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.”

On page 1, Mr. Carr, have you any suggestions?

Mr. Carr: Not up to there, but the latter portion:

“For the purposes of this section, the term ‘any person’ . . . shall include any individual, partnership, association, business trust, corporation. . . .”

and so forth.

That has no bearing on any defendant involved in this case. [481] I do not know why the partnership section would be applicable there at all.

I object to the use of that on the ground it would be confusing to the jury. There is no partnership involved.

The Court: Yes. I do not believe that that is important now because the only purpose of putting it in, Mr. Strong, in my opinion, was to cover the partnership.

Mr. Strong: I agree to have it stricken.

The Court: I shall strike it out.

Page 2, Mr. Carr?

Mr. Carr: The first part I won't object to, but the second part I have to, as a matter of record, your Honor.

The Court: Yes, to save that objection as to whether or not he is the successor.

Mr. Carr: That objection to the successor, also to the validity of the regulation and the objection that at that particular time that the offense is charged that the efficacy of the OPA to administer as an agency or as to the regulations promulgated by them at the time, that no such power existed.

The Court: I shall have to deny—

Mr. Carr: It is a constitutional question, in other words.

The Court: Yes. I shall have to deny the motion in view of the recent case of Jack Parker, Isidor M. Saks and Melvin Caplan et al., petitioners, v. Philip B. Fleming, Temporary [482] Controls Administrator, opinion handed down January 20, 1947, in which the court states in a foot-note:

“The original respondent here was Paul A. Porter, Price Administrator. The functions of his office have been assumed by Philip B. Fleming, Temporary Controls Administrator, who has been substituted as respondent.”

And also in view of the opinion by the United States Emergency Court of Appeals in re William M. Morrison, et al., v. Philip B. Fleming, Temporary Controls Administrator, petition for re-hearing, filed January 16, 1947, also recognizes the power and authority of Philip B. Fleming as the Temporary Controls Administrator.

However, Mr. Carr is right in protecting the record on that.

Mr. Carr: May I have that citation, your Honor?

The Court: Which one, Mr. Carr?

Mr. Carr: I did not get that.

The Court: The Emergency Court or the United States Supreme Court?

Mr. Carr: Both of them, your Honor, if I may have them.

The Court: The October term, 1946, *Parker v. Philip B. Fleming*, Temporary Controls Administrator; and the opinion is dated January 20, 1947. The opinion is by Mr. Justice Black.

Mr. Carr: Yes, your Honor.

The Court: And the other, United States Emergency Court of Appeals, opinion by Judge Maris, Chief Judge, [483] is case No. 352, *Christine Collins, et al., v. Philip B. Fleming*, Temporary Controls Administrator; No. 353, *Adolph Hirsch v. Philip B. Fleming*, Temporary Controls Administrator; *William M. Morrison, et al., v. Philip B. Fleming*, Temporary Controls Administrator, and a petition for re-hearing was filed January 16, 1947. Of course, the decision is not material to the point that the court is mentioning to counsel.

Now we will take up page 3, Mr. Carr. Any suggestions on page 3?

Mr. Carr: My same objection there: that at the particular time there was no constitutional authority for the existence of the OPA.

The Court: Yes. Let the record so show. Overruled.

And on page 4? The same objection to that one, Mr. Carr? I assume the same objection.

Mr. Carr: Excuse me, your Honor. I was just writing something.

The Court: You would have the same objection to page 4, would you not?

Mr. Carr: Yes, I object to that on the ground that there was no constitutional authority for the executive order at that time.

The Court: Overruled. That will be given.

Now, on page 5?

Mr. Strong: As to that, your Honor, may I suggest that [484] everything should go out except Section 2.9 which begins at line 21, ending line 25?

Line 6 should stay in. In other words, it would read: "General Ration Order No. 8 in part provides as follows"

Then it jumps down to Section 2.9.

The Court: Yes. But we have to strike out part of the last paragraph, too.

Mr. Strong: Yes, the last paragraph to be stricken out, beginning at Section 3.1.

Mr. Carr: Let us see. That leaves 2.9 still in?

The Court: Yes.

Mr. Carr: You are striking out the part about—

Mr. Strong: Section 3.1.

Mr. Carr: How about the end of that ". . . it was not acquired in accordance with a ration order by the person tendering it"?

Is that coming out, your Honor?

Mr. Strong: No, I want it in.

Mr. Carr: There is no charge to that effect.

The Court: Mr. Strong, there is not any charge that the original rationing orders in that account were not properly issued by the OPA. Is that not the point?

Mr. Strong: That is true. There is no charge in that respect. But Mr. Ziegler's chief defense is that he issued [485] rationing orders on an account which was not his, and he had nothing to do with it.

The Court: Wait until I read it again.

Mr. Carr: There just is not any charge, your Honor, that involves that last sentence at all.

Mr. Strong: The basic prohibition, your Honor, is against the receipt of a rationed commodity in exchange for a ration document:

“No person shall . . . receive any rationed commodity in exchange for a ration document if he knows or has reason to believe that the ration document was not validly issued or that it was not acquired in accordance with a ration order by the person tendering it.”

The defendant in this case certainly, under the facts, can be held to have acquired sugar, received a rationed commodity not acquired in accordance with the ration order by the person tendering it.

The Court: Let the record show Mr. Carr's objection. Overruled. It will be given.

Now, instruction No. 6?

Mr. Carr: Your Honor, on that last section 3.1, your Honor, that is at the bottom of the page: is that out?

The Court: That is out.

Mr. Strong: That is out.

Mr. Carr: I see. [486]

Mr. Strong: Page 6, your Honor.

The Court: Page 6, Instruction No. 6.

Mr. Strong: Page 6, Instruction No. 6, yes. I think everything should be out on that page except the first two lines and then we go over to—

The Court: Wait a minute.

Mr. Strong: I am sorry.

The Court: You are asking, Mr. Strong, the court to give all of Section 1.1 on page 6?

Mr. Strong: No, just the words "Third Revised Ration Order No. 3 . . . provides in part as follows . . ."

And I think that the only section that charges, the one on the next page, is 15.7 (d), beginning at line 4.

The Court: 15 point what?

Mr. Strong: 7 (d) which begins at line 4, your Honor.

The Court: If it goes out, I am sure Mr. Carr will not object. Instruction No. 6 is out, to and including the two lines on page 7.

Mr. Carr: That leaves in Section 15.7 (d)?

The Court: That is right. That is what we are discussing now.

Mr. Carr: Now, I submit that Section 22.10—shall I take it up?

The Court: Take up the first paragraph.

Mr. Carr: Section 22.10, your Honor; [487]

" . . . No person shall at any time either use or have in possession or under his control or take delivery of any sugar, checks . . ."

That is an entirely different offense and has no bearing on this charge at all, the charge that is made in the information.

Mr. Strong: That may go out, your Honor.

The Court: Yes, I think you are right.

Mr. Strong: The next section can come out, too.

The Court: All right.

Mr. Carr: Section 24.1 (c) Definitions: I have no objection to that. That is at the bottom of the page, your Honor.

The Court: Yes. But on the next page where it defines "Person," I think there is no reason for that any longer.

Mr. Strong: No, that should come out.

The Court: On page 8 "(16)" may go out.

Mr. Carr: Yes, your Honor.

The Court: And "(19)" is already defined in page 2 of the instructions. I see no reason to give it.

Mr. Strong: Your Honor, may I consider page 6?

The Court: Yes, you may consider anything you want to.

Mr. Strong: I think Section 1.1 should stay in.

Mr. Carr: Well, I submit that I must object to that because that is an entirely different offense. It would be [488] easy for the jury to confuse that with the offense charged in the information.

I object to it on that ground.

The Court: The defendant is not informed against for having received the sugar without a proper rationing check, is he, Mr. Strong?

Mr. Strong: Yes. He did "willfully and unlawfully receive a rationed commodity . . . in exchange for a ration document . . ."

Mr. Carr: Well, if your Honor please, this is an entirely different ration order. This is Ration Order No. 3, and the charge on that particular phase is under Ration Order No. 8.

So he is citing the section from Ration Order No. 3 which the jury might confuse as being applicable as an offense under Ration Order No. 8.

Mr. Strong: Well, I don't think that it makes much difference since it is covered by Section 15.7 (d).

The Court: All right, it is out, then.

Paragraph (19) on page 8 I have stricken out. It is repetitious. You have it on page 2, Mr. Strong.

Mr. Strong: Yes, your Honor.

The Court: I should like to avoid repetition if I can.

Now, on page 9, Mr. Carr?

Mr. Carr: Well, I object to that instruction on the ground that it is not the law of the Circuit, your Honor, in [489] that it brings up the question—let me just point specifically to what it says—and it reads:

“ . . . intentional, conscious doing of the act prohibited; that is, intending the result which actually comes to pass . . . or conduct marked by careless disregard as to whether or not one has the right so to act . . . ”

I think the instruction is misleading there. I do not think that is the law. It has to be willful, deliberate and obstinate where the word “willful” is used.

The Court: Well, I shall read an instruction on willfulness from the Supreme Court of the United States. Let us see if either counsel objects to this.

This is from *Armour Packing Co. v. United States*, 209 U. S. 56 at 85:

“You are instructed that under the statutes involved in this proceeding it is necessary, in order to find the defendant guilty, that you find he violated the law willfully. The word ‘willfully’ as used in the information means an intentional, conscious doing of the act prohibited, that is, intending the result which actually came to pass without ground for believing it lawful or, in other words, marked by careless disregard as to whether or not one has the right so to act.

“To express it in another way, it means purposely or obstinately or designed to describe the attitude of [490] a person, who, having a free will or choice, either intentionally disregards the law or is plainly indifferent to its requirements.”

That is the United States Supreme Court speaking.

Mr. Strong: That is almost in the words of my instruction, your Honor.

Mr. Carr: Is that a statute involved there in that case, your Honor, that required willfulness?

The Court: It only defines the word “willfully.” It does not pertain to a particular; it just defines the word “willfully,” what is meant in the law by “willfully.”

Because attorneys all have different wordings for “willfulness,” I spent considerable time in going through to find a definition by the Supreme Court of the United States, gentlemen; and that is the one I found.

Mr. Strong: It is satisfactory to the Government, your Honor.

The Court: But Mr. Carr might find some objection to it.

Mr. Carr: Your Honor, I don’t want, naturally, to refute the Supreme Court’s instructions if that was the instruction that was given in a case where “willfully” is required by the statute to—

The Court: It says:

“The word ‘willfully’ as used in the information means an intentional . . .” [491]
and so forth.

Mr. Carr: I just—

The Court: Go ahead. If you think that is not right, get your objection in here.

Mr. Carr: Well, I think I will have to object to that, your Honor. I hate to say the case is—

The Court: Go ahead, put it in.

Mr. Carr: Shall I make my objection?

The Court: Yes, Mr. Carr.

Mr. Carr: Is there an instruction, your Honor, that says it does not require the defendant to have actual knowledge?

The Court: I am not going to give that instruction.

Mr. Carr: That is going to be my objection.

The Court: Yes. I am not going to give the instruction submitted by the Government on page 9. I am going to give the instruction I have read to you from the opinion of the Supreme Court in *Armour Packing Co. v. United States*, 209 U. S. 56 at 85.

Mr. Carr: Yes.

The Court: And now you want to make your record on that?

Mr. Carr: I think I have already done that. I was referring to Government's Instruction No. 8, your Honor.

The Court: All right.

Mr. Carr: The next instruction where it says that "the law does not require the defendant have actual knowledge of [492] the provisions of the Second War Powers Act of 1942, of General Ration Order No. 8, or of the 3rd Revised Ration Order No. 3, governing the rationing of sugar"

It also says:

"All persons, including those who use or deal in sugar, are charged by law with notice of the statute and ration orders and their contents because of publication"

Well, I don't think that fully states the law.

The law is that there is a presumption and that there is a rebuttable presumption which is covered in one of our instructions.

Mr. Strong: If your Honor please, a rebuttable presumption has nothing to do with knowledge. I have checked the statute, and if your Honor will look at the statute you will find that rebuttable presumption is as to publication, printing, not as to knowledge. There is no presumption that is rebuttable as to knowledge.

The Court: Very well. What is your number of the instruction, Mr. Carr?

Mr. Carr: You mean the one that I am looking at now?

The Court: No, the one you think explains in some measure this one?

Mr. Strong: No. 22, your Honor.

Mr. Carr: Yes, sir, No. 22.

The Court: All right. Mr. Strong, I shall hear you on [493] defendant's requested instruction No. 22.

Mr. Strong: That instruction incorrectly states the law, and I should like to read the law to your Honor.

The Court: All right.

Mr. Strong: That instruction shows that it is drawn from Title 44, U.S.C.A., Section 307; and that is what I am reading now.

Title 44, United States Code Annotated, Section 307, says:

"Filing document as constructive notice; publication in Register as presumption of validity; judicial notice; citation . . ."

That is the caption. Then it says:

“No document required under Section 305 (e) of this chapter to be published in the Federal Register shall be valid as against any person who has not had actual knowledge thereof until the duplicate originals or certified copies of the document shall have been filed with the Division and a copy made available for public inspection as provided in Section 302 of this chapter; and, unless otherwise specifically provided by statute, such filing of any document, required or authorized to be published under Section 305 of this chapter, shall, except in cases where notice by publication is insufficient in law, be sufficient to give notice of the contents of such document to any person subject thereto or affected [494] thereby. The publication in the Federal Register of any document shall create a rebuttable presumption (a) that it was duly issued, prescribed, or promulgated; (b) that it was duly filed with the Division and made available for public inspection at the day and hour stated in the printed notation; (c) that the copy contained in the Federal Register is a true copy of the original; and, (d) that all requirements of this chapter and the regulations prescribed thereunder relative to such document have been complied with. The contents of the Federal Register shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number.”

Obviously from that the presumption which is rebuttable is not as to knowledge which is sufficient once it is published but the rebuttable presumption is only as to the issuance, promulgation, filing, being a true copy, the requirements and regulations relative to the document being put in.

So that instruction is wholly inconsistent with the law when it seeks to make out of the knowledge of the order a rebuttable presumption.

Mr. Carr: Well, I am not in accord with counsel on his interpretation.

Mr. Strong: May I hand this book to your Honor?

(Counsel hands book to the court.) [495]

Mr. Carr: Your Honor, could I ask the bailiff to get a couple of citations?

The Court: Yes.

Mr. Carr: 145 Fed. (2d) and 151 Fed. (2d).

(Brief pause in the proceedings.)

Mr. Strong: May I state to your Honor further, while counsel is looking at the book, that if counsel's construction of the Federal Register publication constructive notice section is correct, then in all instances ignorance of the law would be an excuse, since every defendant could take the stand and say that he had no actual knowledge. And that course would then come within the provision called for by this instruction that that is a presumption but it is a rebuttable one, and he simply rebuts it by saying, "I didn't know about it."

That would eliminate the publication in the Federal Register.

Mr. Carr: I want to read this language from the Ninth Circuit.

This is the case of *Flannagan v. United States*, 145 Fed. (2d) 740:

"Nor was there error in denying appellant's motion for an instructed verdict for insufficiency of the evidence to warrant conviction. The evidence shows the appellant

a peddler truck seller, buying from packers and selling his meat, here the side of beef, 'beef wholesale cut,' [496] to retailers of meat, here to Kilduff, operating a market in Anahime, California. Appellant is charged with knowledge of the maximum price fixed by Regulation 169, since on June 9, 1943, prior to the sale, the regulation, as amended and to take effect on June 19th, was published in the Federal Register. Such publication created a rebuttable presumption of notice to appellant"

In other words, he did not rebut the presumption in this case.

The Circuit Court said it created a rebuttable presumption. The facts show that he did know. There wasn't any rebuttal.

Here it is again in this case, your Honor, in *Kempe v. United States*, This is the Eighth Circuit.

The Court: 151 Fed. (2d) 680?

Mr. Carr: Yes, in which they refer on page 684:

"The information plainly advised the defendant that he was charged with violating certain specified regulations and statutes The defendant was charged with knowledge of Ration Order No. 5C, which he was accused of violating by Count III; likewise, he was charged with knowledge of the maximum price of gasoline as fixed"

by a certain regulation.

". . . since both of these regulations had been published in the Federal Register and the volume and page were set forth in the information. Such publication created a [497] rebuttable presumption of notice to the defendant"

Citing the *Flannagan* case.

I think it does have very specific application. In other words, if it is a rebuttable presumption, your Honor, and this defendant had no knowledge of the act and he rebuts that, it seems to me that that is the very reason of the willful feature in the act.

Mr. Strong: If your Honor please, following both of those portions that counsel has read, there has been parenthesis in those cases in reference to this section, is that right, counsel, 44 United States Code Section 307?

Mr. Carr: Oh, I am sure there is, yes, yes.

Mr. Strong: What the court has said there is not inconsistent with what I have said at all. I do not deny that there is a rebuttable presumption in connection with publication, but my position merely is that it is not a rebuttable presumption as to knowledge but a rebuttable presumption as to the requirement with compliance to complete and effectuate the publication. That is all that that section says and that is all that this court points to.

This court, the Ninth Circuit, has not said that there is a rebuttable presumption as to knowledge but simply notice, and in order to give notice it must be done in conformance with the requirements.

Therefore, I again submit that the instruction requested [498] is incorrect.

The Court: I will pass that for the present, gentlemen, and have both counsel see if they can submit an instruction that will embody those expressions and also the statute to which my attention has been called.

You were discussing Instruction No. 8, gentlemen, of the Government, page 10?

Mr. Strong: Yes.

The Court: I shall mark that "passed now" and take it up later tonight or some other time.

Government's Instruction No. 9 on page 11. Mr. Carr?

Mr. Carr: Well, I object to that on the ground it does not sufficiently state the elements of the offense.

The Court: I have some instructions on that.

Mr. Carr: Yes, your Honor.

Mr. Strong: I think it is your instruction 24, Mr. Carr.

Mr. Carr: Mine is No. 24, your Honor.

Mr. Strong: Well, I have no objection to substituting 24 for my Instruction No. 9.

The Court: All right.

Mr. Strong: Except, your Honor, that on line 18 of defendant's instruction 24—

The Court: There is nothing wrong with that.

Mr. Strong: Well, I assume that material allegation refers only to those that are not surplusage. [499]

Mr. Carr: Then, your Honor, No. 25—

The Court: Wait until I get my record straight on this.

Let the record show that the Government consents to the substitution of the defendant's requested instruction No. 24 for the Government's requested instruction No. 9.

Mr. Carr: The same objection, your Honor, to the next one.

Mr. Strong: Yes, we consent to that.

The Court: That is the same.

Mr. Carr: My instruction No. 25.

Mr. Strong: I will agree to the substitution.

The Court: All right. Let the record show that the Government consents to the substitution of the defendant's requested instruction No. 25 for the Government's requested instruction No. 10.

All right, we pass on now to page 13 of the Government's instructions, No. 11.

Mr. Carr: Well, this instruction, your Honor—may I just briefly refer to it?

The Court: Well, I shall point out a few objections, and then, Mr. Carr, you will have the whole matter in front of you.

Mr. Carr: Very well, sir.

The Court: On line 12 after the words "behalf of" I have stricken out two words "either of" and I have stricken out the "s" on "defendants" and in the same line I have inserted above the word "defendant" "Paul J. Ziegler." [500]

And on line 13 I have stricken out the word "defendants, or defendant" and I have inserted the words "Paul J. Ziegler."

Those are my insertions. Now you have the whole instruction before you, Mr. Carr. And in line 19½ I have stricken out the words "or defendants."

Mr. Strong: The same, your Honor, should be done on line 15.

The Court: And I have done the same on line 15.

Mr. Strong: That is agreeable to the Government.

The Court: You have the whole instruction now, Mr. Carr.

Mr. Carr: Well, I will have to object to that on the ground, your Honor, that it is an erroneous instruction in that it does not comply with the charge set up in Counts Two, Four, Six and Eight in that the way I read that instruction it makes an offense if Paul J. Ziegler received sugar, and it confuses the West Coast Supply Company account. In other words, there is no longer any account of the West Coast Supply Company. The evidence is

such that that is not involved in the case because under that instruction, your Honor, we are apt to convict the defendant.

The Court: On line 8 strike out "s" on "defendants" and the following words "or either of them" are to be stricken out.

Mr. Carr: Do I make myself plain, your Honor? In other words, this instruction does this to the defendant: obviously there was nothing in that account. He had no account, and the [501] check was drawn by Paul J. Ziegler.

This instruction makes it so that if those checks were an overdraft on the West Coast Supply Company account, then if the jury believes that, they must convict him. And I contend that that is not the charge, nor can he be convicted on an overdraft on the West Coast Supply account.

For that reason the instruction leaves out an element of the offense.

The Court: What element?

Mr. Carr: Well, it makes him subject to conviction for merely signing the check and receiving sugar. That is not the charge.

In other words, if there is an overdraft on the West Coast Supply Company account, he is liable; and that is not the charge under Section 15.7 (d). That is where the variance comes in, your Honor.

The Court: Suppose the jury found that the only account there was was the West Coast Supply Company, and Exhibit 2 authorized Paul J. Ziegler to draw on that account; also that he issued these checks on the West Coast Supply Company and signed his name, would that not be covered in this particular instruction?

Mr. Carr: Well, I contend that that would not be an offense, your Honor. And that is the reason I contend that it would not be an offense under the counts involved, and that is [502] the reason I say the instruction is fallacious.

The Court: Mr. Strong, what do you have to say about that?

Mr. Strong: The instruction as it now stands I believe is correct, your Honor, because I believe it would be an offense, regardless of whether the defendant did or did not insert the name "West Coast Supply Company."

I think the jury can properly find that he intended to have somebody insert something if he did not do it himself in order to make the check a completed check so that he could draw on the account. He obviously was not issuing this paper for any other reason except that it be used as a ration check.

If the defendant's position, as expressed by Mr. Carr, is the correct law, then I submit that the defendant has used the only way of getting around the requirement that ration currency be given in exchange for the purchase of sugar. I do not think that that is the law, your Honor. I do not think that it contemplates that any sugar can be obtained without the use of ration currency.

The Court: Let me read it carefully now.

"Concerning each of Counts Two, Four, Six and Eight of the Information, if you believe beyond a reasonable doubt that on or about the dates alleged in the Information, the defendant did on those dates, willfully receive, or cause to be received the amount of sugar indicated in each of the Counts, in exchange for a sugar [503] ration check drawn by or on behalf of . . ."

That would have to be—

Mr. Strong: I think maybe we can add, your Honor, “by or on behalf of the defendant Paul J. Ziegler on the West Coast Supply Company account” to clarify it.

I would have no objection to that, if that is what counsel wants.

Mr. Carr: No, I object to that instruction in its entirety. I think it is misleading. I do not think it covers the offense that is alleged in Counts Two, Four, Six and Eight; and I don’t think that it sets up the elements of the offense.

Mr. Strong: If your Honor wishes, I can try to reframe it and produce on Monday a reframed one.

The Court: I am trying to reframe it here to bring it within the terms of the information. But I have rather badly mutilated it; so we will pass it.

Mr. Strong: Thank you.

The Court: Mr. Carr, let us have your objection, if any, to Government’s Instruction No. 12.

Mr. Carr: Let’s see.

The Court: I have stricken out “s” in line 9, and I have stricken out “or either of them” in line 9 and I have inserted above it “Paul J. Ziegler.”

I have stricken out in line 13½ “or defendants” and I have stricken out in line 17½ “or defendants.” [504]

Mr. Carr: Well, your Honor, I have to on my theory of the case object to that because of that variance between the evidence and the information. At least my position is that.

The Court: Yes, I understand.

Mr. Carr: And it does not properly state the elements, all of the elements, in view of the offense charged.

The Court: All right, let the record so show.

Mr. Carr: That is overruled, your Honor?

The Court: Yes. Let Mr. Carr's objection show in the record.

All right, take up the defendant's instructions.

Mr. Strong: I assume, in connection with the defendant, that your Honor will give your Honor's usual general instruction?

The Court: Yes. I shall indicate it. I think Mr. Carr is familiar with my instructions.

Instruction No. 1 is given in my general instruction, Instruction No. 2, Instruction No. 3, No. 4, No. 5, No. 6, No. 7.

Mr. Carr: 6 and 7?

The Court: And 7.

Mr. Strong: 8 is the same as 4, almost.

The Court: I give that in different parts of my instructions. I say:

"The defendant is presumed to be innocent at all stages of the proceedings until the evidence produced on behalf [505] of the Government shows him guilty beyond a reasonable doubt. The burden is not upon the defendant to establish his innocence."

That is a new expression I have added to my instruction. I find the authority in 143 Fed. (2d) at 681:

"This rule applies to every element of the offense charged. Mere suspicion or mere probability will not authorize a conviction. Reasonable doubt in such doubt . . ."

Then I have the general instruction on reasonable doubt.

Mr. Carr: In other words, you cover, your Honor, "partial comparison and consideration of all the evidence"?

The Court: Yes. In another part I have covered that.

Mr. Carr: I have always liked that. I don't know. It may just say:

“ . . . you can truthfully say you have an abiding conviction of the defendant's guilt”

The Court: And

“ . . . whenever, after careful consideration of all the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.”

That is mine.

Mr. Strong: That is satisfactory to the Government.
[506]

Mr. Carr: I do not think it would be in error if your Honor does not give this.

The Court: I have covered that pretty strongly in that section there.

We will take up No. 8. I give that in general language.

As to No. 9, I have just read you mine on that; and I express it in other ways. No. 9 is given in substance.

No. 10 is given in substance.

No. 11 is part of my general instructions.

Now, as to No. 12, gentlemen:

“You cannot find a defendant guilty upon any count of the information unless you are convinced, beyond a reasonable doubt, by the evidence of the truth of every material allegation of such count.”

I just read you that in my instructions.

Mr. Carr: If that is covered, your Honor, there is no need of giving it.

The Court: No. Now, let us read No. 13:

"The Court advises you to find the defendant, West Coast Supply Company . . ."

Mr. Carr: That is out.

The Court: Yes, that is out.

Mr. Strong: We object to No. 14.

The Court: What?

Mr. Strong: I thought your Honor was going to No. 14. [507]

The Court: No, No. 13.

No. 14:

"The Court advises you to find the defendant . . . not guilty . . ."

Not given, exception allowed to the defendant.

Mr. Carr: That is on 14?

The Court: No. 14, yes.

No. 15: I give that, gentlemen, in my general instructions. That is all right.

As to No. 16—

Mr. Strong: I object to 16, your Honor.

The Court: Well, it should be revamped in some measure. I have a note here.

Mr. Carr: Of course, that is our theory of the case, your Honor.

The Court: That is right. Not given, exception allowed to the defendant.

Mr. Strong: We object to 17, your Honor.

The Court: What is the objection to 17? On the face of it it looks to me to be all right.

"You are instructed that a sugar ration check may be issued only by a depositor, that is, by a person who has a ration bank account, against his account. Even if you should find beyond a reasonable doubt that the defendant, Paul J. Ziegler, in fact, did issue or cause [508] said ration checks to be issued, you cannot find defendant Paul J. Ziegler guilty unless you are convinced, beyond a reasonable doubt, that he is either a depositor or that he was authorized by defendant West Coast Supply Company to issue checks to be drawn on its account."

Mr. Strong: I withdraw my objection. I am sorry.

The Court: Yes, I think that is all right.

Mr. Strong: Does your Honor want to leave in the words "defendant West Coast Supply Company"?

Mr. Carr: I guess that will have to come out.

Mr. Strong: Just the word "defendant."

Mr. Carr: The instruction may be wrong now.

The Court: No, I think that has to stay in because you are dealing with that account.

Mr. Carr: Let me have just a moment, your Honor.
(Brief pause in the proceedings.)

The Court: If they find he was not authorized by the West Coast Supply Company, why, of course, under this instruction he would not be guilty.

Mr. Strong: I assume the word "defendant" is merely descriptive to designate West Coast Supply Company.

Mr. Carr: The only trouble with that, your Honor, is that now our contention is that since all the evidence is in—I drafted an instruction, earlier, you know—that now that there is no evidence whatsoever before the jury to show an [509] authorization—

The Court: I think that card does.

Mr. Carr: I mean in a criminal case, your Honor. I think that is where the problem comes in. It might for a civil matter. That I can understand. But for a criminal case I think it raises—may we pass that one and see if I can revamp that?

Mr. Strong: I would like it given as is now.

The Court: I shall strike out “was authorized.” I shall strike out the word “defendant” on line 10 because the West Coast Supply Company is not a defendant.

Mr. Strong: Yes.

Mr. Carr: May I try to revamp that, your Honor?

The Court: All right, we will pass it.

No. 18: I have already given you the instruction I am going to give with reference to willfulness.

As to No. 19—

Mr. Strong: The Government objects to 19.

The Court: Defendant’s requested instruction No. 19. Well—

Mr. Carr: I assume that on the first part of that instruction your Honor has indicated the contrary ruling on that first part, the first paragraph from your previous rulings?

The Court: That is right. [510]

Mr. Carr: It may be we have confused two things in that instruction, your Honor. They ought to be broken down. If so, your Honor can pass it. There are really two things in there, I am afraid.

The Court: We will pass it. No. 18 is passed.

Defendant’s requested instruction No. 20?

Mr. Strong: Objected to by the Government. The definition of “willfully” is already given by your Honor.

The Court: Yes, I have covered that. The same case is cited in support of it.

No. 21?

Mr. Strong: Objected to by the Government as not the law.

The Court: That is Mr. Carr's theory, though.

Mr. Carr: Yes, that is our theory, your Honor.

The Court: Not given, exception allowed to the defendant.

Mr. Strong: Did your Honor say "not given"?

The Court: Not given, exception allowed the defendant.

Defendant's requested instruction No. 22?

Mr. Strong: That was passed, I believe, for revision.

Mr. Carr: No.

The Court: Yes, I have marked "hold" on that.

Now we will take up No. 23. No. 23 will be given.

Mr. Strong: Did your Honor say "will be given"?

The Court: Yes.

Mr. Strong: We object to it for this reason, your Honor— [511]

The Court: I have marked it "okay" here. What is the objection to that?

Mr. Strong: Well, I don't think the juror should be instructed to stand by his decision once he reaches it.

The Court: That is not in here, is it?

Mr. Strong: On line 8.

Mr. Carr: The law of the land and this instruction are older than I am, your Honor.

The Court: It is not very old, then.

Mr. Carr: Well, it's been given for at least 40 years around here.

The Court: Well, here is mine, gentlemen:

"However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Upon retiring to the jury room you will select one of your . . ."

Mr. Strong: That is satisfactory to the Government.

Mr. Carr: I will ask that that instruction be given, your Honor. It is an instruction that is going back sometime. I remember Judge James used to give that instruction invariably, [512] and I think it has come down through the annals of this court and I think it is a very just and proper one. It tells them to stand their ground when they believe something but not be averse to listening to their fellow jurors; that they should not surrender their independent judgment but they should listen.

The Court: I say: "You should not surrender your honest convictions . . ."

I say that.

"In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors . . ."

Mr. Carr: I just don't think it covers it fully enough, your Honor. I respectfully ask you to give this one.

The Court: What further now would you add to that?

"If you arrive at another conclusion, don't let anybody change your mind"

that is what you want?

Mr. Carr: "If, after such a full and fair discussion with them, any juror still satisfied that a decision is right, he should say so by his verdict. If, on the other hand, after such full and fair discussion any juror is satisfied that his original decision was wrong, then he should unhesitatingly abandon such decision and render his verdict according to such final decision." [513]

I believe, your Honor, I have run into this many times. Jurors get the impression that they would vote with the majority.

The Court: I tell them not to.

Mr. Carr: And unless they get that plain, it often happens. I have had them tell me,

"I didn't know that you could have a disagreement."

The Court: And I say further:

"It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without any violence to your independent judgment. To each of you I would say that you must decide the case for yourself but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous."

I have given that for six years now.

Mr. Carr: Your Honor, I am not criticizing your instruction.

The Court: No, you have that right, Mr. Carr. I want you to.

Mr. Carr: I will tell you very frankly, in a certain case that was tried in your Honor's court I talked to a woman juror afterwards, and she said, "Well, I didn't know that you could disagree in those cases. I thought you had to [514] arrive at either a guilty verdict or a not guilty verdict."

The purpose of that particular phrase in there about "stand by your decision" is, to me, very important in a criminal case.

The Court: Well, you may reverse me.

Mr. Carr: No, I don't know about that, your Honor, on that instruction.

The Court: If I change that general instruction—I have given it for six years—I think I should rewrite it and give it in accordance with this other suggestion. And I hesitate to do that.

No. 23, gentlemen, I have decided.

The next one I have is No. 26.

Mr. Strong: Nos. 24 and 25 were agreed before, your Honor.

The Court: All right. No. 26: Well, let me hear about that.

Mr. Strong: I object to that, your Honor.

The Court: On what ground?

Mr. Strong: Because it specifically directs the jury, in effect, to acquit the defendant Paul J. Ziegler if he did not physically place the name "West Coast Supply Company" on the check. It also gives them a definition of "ration check" which includes, in effect, the instruction to acquit if Paul J. Ziegler did not physically place the name "West [515] Coast Supply Company" on a check.

The depositor portion is already covered elsewhere.

Mr. Carr: I contend, of course, that that is the law of the case right there.

The Court: I think that is more for argument. I shall allow an exception to Mr. Carr. I think that is more a matter of argument to the jury.

No. 27?

Mr. Strong: Objected to for the same reason, your Honor. It is another way of reaching the same result.

Mr. Carr: Your Honor, if you include instructions 26 and 27, in view of our position under the new rules, instructions that are now given are approved prior to the argument, that places the lawyer in this position: a lawyer should not argue law that is not the law in court.

I contend that that is the law, and I wish to argue it to the jury. The jury should receive instructions on that law. If you leave me without those instructions, I am in no position, theoretically at least, to argue that to the jury.

The Court: In the last sentence you say, in proposed instruction No. 27:

“Thus, if you find that the name West Coast Supply Company was placed upon the checks after delivery of said checks, then it was the duty of the broker or seller to return said checks to the issuer.” [516]

There is evidence here to show, from one of the brokers, that he was authorized to write in the name of the West Coast Supply Company. What does that do to that evidence?

Mr. Carr: Well, your Honor, his contention was that Ziegler might have indicated to him, but as to the authorization we claim that there was no such evidence.

I was merely following that alteration section to which I referred which makes it a duty. It may be that your Honor will want to re-word that latter line, but I feel that that is the law under the regulations.

Mr. Strong: May I call your Honor's attention to one thing? I have heard about this alteration section for sometime in this case, and I would like to call your Honor's attention to the fact that there are three types of alterations discussed. One is mutilation. The second is erasure. And the third is partial destruction.

It says nothing about addition as an alteration at all.

Mr. Carr: Well, now, I wouldn't be just too certain about my interpretation of that, Mr. Strong. Alteration has been defined since the beginning of law.

The Court: But, of course, if there is a specific definition, that would control over any general interpretation.

Mr. Carr: "No check which has been altered . . . mutilated or partially destroyed, or which contains an erasure . . ."

Now, what does "alter" mean? They didn't mean when they [517] said "No check which has been altered . . . mutilated . . ."

It doesn't mean mutilated.

". . . or partially destroyed, or which contains an erasure . . ."

There are four separate things there. Certainly alteration, in the common usage, means, for example, if I issue you a check and you change it from \$100,000 to \$150,000, it is an alteration. If you add anything to an instrument—

The Court: I think it is a matter of argument to the jury. Give Mr. Carr an exception.

No. 28?

Mr. Strong: I think that that is a good instruction.

The Court: No. 28 is a new kind of instruction to me, but I do not see any objection to giving it. I shall give it. It might have some bearing.

No. 29?

Mr. Carr: I sort of offer that instruction with a little bit of a blush, your Honor, because it is the theory of the Government's case but it is not my theory. But I just drafted it.

Mr. Strong: Well, I would say that I think it is a good instruction because of the fact that if there was sufficient credit in the bank account, those checks would not have been invalid. It should be changed to read:

“ . . . to acquit the defendant Paul J. Ziegler.” [518]

Is not that the same as in another instruction previously given here, your Honor, which sets forth the elements necessary before a conviction can be had?

The Court: It is a little more specific, and it is the law. In other words, if the jury find there were sufficient credits in that account—

Mr. Strong: We don't object.

The Court: All right. No. 30?

Mr. Strong: We object to 30, your Honor.

Mr. Carr: That certainly is well settled law, your Honor. The evidence, if you will recall, was that he came to me prior to the time that he received the sugar or prior to the time that West Coast received it and got legal advice on the matter. And from the advice he could not determine that it was an offense.

That Williamson case is a well settled case. That instruction has been given many times.

Mr. Strong: If your Honor please, if that were the law, then we would have no case because there is no dispute of the fact that the defendant spoke to Mr. Carr. If simply obtaining advice from an attorney removes all criminal liability for subsequent acts, there would never be any cases involving criminals, because they would all consult attorneys before.

Mr. Carr: It is a question of intent and willfulness, [519] and it goes to the jury for them to determine.

If a person went to a lawyer in good faith, your Honor, and said, "Here are the facts. I don't know what to do. I want to do this act, but I don't want to violate any law."

If the jury determines it is an honest proposition, it is a defense because it goes to willfulness.

Mr. Strong: This instruction makes that the only element.

The Court: Well, I think it is too broad; but I shall give an instruction if you gentlemen will give me a modified instruction. This goes a little too far.

I have a decision from the Supreme Court of the United States. I tried to find it while I was looking over these instructions. It is in my old instructions.

This is a little violent, but I am going to include an instruction along that line but not quite so drastic. So we will pass it.

Mr. Carr: I don't know, your Honor. Would your Honor indicate what part you—

The Court: Well, I tried to find that decision. Off-hand I would not like to do it without trying to find the decision.

Mr. Carr: It is the Williamson case, your Honor, the one I cited, in fact, on the instruction.

The Court: We will look up ours and yours.

Mr. Strong: I have no objection to No. 31, your Honor.

The Court: No. 31 is important, Mr. Carr? [520]

Mr. Carr: Very, your Honor.

I tried and defended the Ballard case and talked to one of the jurors, and he said he didn't like the looks of the defendant, and two other jurors said the same thing. They mentioned the personal appearance or the looks or attitude of the defendant. They didn't like Mrs. Ballard's blonde hair, for one thing. And I was surprised at grown people going into a jury room and proceeding on that theory.

Mr. Strong: There is another affirmative instruction which I believe your Honor gives, that the jury in determining credibility should take into account various considerations but I do not believe that this in any conflicts with that.

Mr. Carr: That is as to the witness on the stand, if he is evasive or anything of that kind. So it doesn't conflict with this.

The Court: Well, Mr. Carr wants it. I can understand in some cases where such an instruction would be important. But I did not think it applied in this case. However, I shall give it. That is defendant's proposed instruction No. 31.

Mr. Carr: No. 32, I think, covered the partnership, your Honor; and that, of course, now is not necessary.

The Court: Yes, "principal," is out.

Do you think that applies, Mr. Strong?

Mr. Strong: No, I don't think it applies. I agree with Mr. Carr. It should go out. [521]

The Court: All right, gentlemen. If you will let me have the balance of the instructions by 11:00 o'clock

Monday, I shall appreciate it very much so that I can work on them so we won't delay the trial in the afternoon.

All right, we will adjourn.

(Whereupon, at 5:40 o'clock p. m. an adjournment was taken until 1:30 o'clock p. m., Monday, February 10th, 1947.) [522]

Los Angeles, California, Monday, February 10, 1947
1:30 P. M.

The Court: Stipulate the jury is present, gentlemen?

Mr. Strong: So stipulate.

Mr. Carr: So stipulate.

The Court: Stipulate the defendant is in court?

Mr. Carr: So stipulated.

Mr. Strong: So stipulated.

The Clerk: There is another matter, your Honor.

(Brief interruption for other court matters.)

The Court: Ladies and gentlemen of the jury, I have some matters to take up with counsel. So you will please retire to your jury rooms, and I shall call you.

Again I give you the same suggestions. I know you will not discuss the matter among yourselves or permit anyone to discuss it in your presence. Do not express or form any opinion as to the merits of the controversy until it is finally submitted to you under the instructions of the court.

(Jury excused at 1:35 o'clock p. m.)

The Court: Now, let me get the Government straight here first.

The Government has withdrawn its instruction No. 4 found on page 4 and has asked to have substituted instruction No. 4, new instruction No. 4.

Mr. Carr: Of course, that is— [524]

The Court: I am just trying to straighten them out.

Mr. Carr: I see. I am sorry.

The Court: And the Government has prepared an instruction No. 8 to be substituted for the former instruction No. 8 that was submitted to the court.

The Government has withdrawn its formerly submitted instruction No. 11 and asked to have submitted a newly prepared instruction No. 11.

The Government has withdrawn the original submitted instruction No. 12 and asked to have submitted a new instruction No. 12.

The Government has requested an additional instruction, which is numbered 6-B.

The Government has requested an additional instruction numbered 6-C.

Mr. Strong, have I noted all of your substitutions and new suggested instructions?

Mr. Strong: Yes, your Honor.

The Court: Now we will go to the defendant's.

The defendant has proposed a rewritten instruction No. 33. Is that the same number as the other? I think not.

Mr. Carr: No, your Honor. That is in addition.

The Court: In addition to the other one?

Mr. Carr: Yes.

The Court: As to advice of counsel? [525]

Mr. Carr: Yes.

The Court: What was the number of the other one?

Mr. Carr: That was No. 30, I believe, your Honor. Yes, No. 30.

The Court: Yes. The defendant has prepared instruction No. 33 which it requests to be given in connection with the instruction heretofore discussed, instruction No. 30.

The defendant prepared a new instruction No. 35.

Mr. Carr: No. 34, your Honor.

The Court: 34? I have "35" here. Do you have another one? Maybe it is not in order. I have 35, 36, 37, 38, 39 and 40. I do not have 34.

Mr. Carr: Counsel, did I give you a copy of 34?

Mr. Strong: Yes, I have a copy of 34.

Mr. Carr: If I may, your Honor, I shall pass it up.

The Court: Do not pass it up until I go through some other papers here.

(Brief pause in the proceedings.)

The Court: Now, Mr. Carr?

Mr. Carr: May I pass it to the clerk, your Honor?

(Document handed to the court.)

The Court: Defendant proposes a new instruction No. 34. The defendant proposes a new instruction No. 35. The defendant proposes a new instruction No. 37.

Mr. Carr: 36, your Honor. [526]

The Court: "37" I have, Mr. Carr.

Is there a No. 36 that I do not have, too?

Mr. Carr: Yes, your Honor.

The Court: Wait and let me see.

(Brief pause in the proceedings.)

The Court: No, Mr. Carr, that has been omitted, too.

Mr. Carr: You do not have it, your Honor?

The Court: No.

Mr. Carr: Mr. Strong?

Mr. Strong: I have a copy here.

Mr. Carr: I will pass it to the clerk.

(Document then handed to the court.)

The Court: The defendant has new proposed instruction No. 36. The defendant has a new instruction No. 37 which it requests the court to give.

Mr. Carr: May I interrupt, your Honor?

The Court: Yes.

Mr. Carr: To say that 37 is practically the same instruction as the one numbered 19, a rewritten instruction of 19, your Honor.

The Court: Shall we withdraw 18 and substitute 37?

Mr. Carr: 19 you mean, your Honor? 19? I think it is probably more expressive of the factual situation.

The Court: Yes.

Mr. Carr: Oh, that is perfectly all right. [527]

The Court: Withdraw 19?

Mr. Carr: And substitute 37.

The Court: And substitute 37.

Mr. Strong: I understand your Honor has not ruled on them?

The Court: No. No, I am trying to get them in place so we can discuss them.

The defendant requests new instruction No. 38. You had something on that, did you not?

Mr. Carr: Well, that is proposed in addition, your Honor, because there was some question.

The Court: With what does it go?

Mr. Carr: That other one, that is, instruction 22.

The Court: The defense requests instruction No. 38 to be given in connection with 22, is that right?

Mr. Carr: Well, it is more or less drawn in two different ways, your Honor. There was some question the other day about the form of No. 22; so I drafted 38 and 39 and tried to make an instruction that possibly would be—

The Court: On the same subject?

Mr. Carr: Yes.

The Court: And the defendant requests instruction No. 40. I do not find a definition suggested by either of the word "alteration."

Therefore, I am taking the definition out of Bouvier's [528] Law Dictionary, Rawles's Third Edition, Vol. 1, page 183.

"I charge you that 'alteration' means a change in the terms of a written instrument by a party entitled thereunder without the consent of the other party by which its meaning or language is changed."

Mr. Strong: That is satisfactory to the Government, except that we do not think that alteration has any part in it.

The Court: But the defense has raised it. The jury would have no knowledge of what an alteration is, and there is no definition in the statute.

Mr. Carr: That is satisfactory to us.

The Court: It seems to be clear. In other words, if an instrument is delivered and if the parties agree to a change, it is not an alteration. But, on the other hand, if they do not, it is an alteration under the law.

Mr. Carr: The only trouble with that, if I may respectfully disagree with that—

The Court: Yes.

Mr. Carr: —is that Ration Order 15.7 provides that if it is altered after it is passed, it cannot be passed. I mean, after it is delivered it cannot be passed.

The Court: Then it could not be sent back and be corrected.

Mr. Carr: I think that giving a dictionary definition [529] is quite proper, but I am just wondering if you leave that short of reading the section from the ration order if you are not leaving the jury under the impression different from what the order requires. In other words, it says:

“A person who holds such a check shall return it to the issuer with request for a new check. . . .”

Mr. Strong: No such person is charged in this information with having committed a violation of that order, your Honor. That would be somebody who had it and then passed it on.

The Court: The defendant is entitled to an instruction on it. If there is any objection to it, I shall withdraw it and let the jury just speculate on it.

Mr. Strong: There is no objection to the definition given by your Honor.

Mr. Carr: I shall ask the court to merely add that to the definition and read that portion of Section 15.7 of the 3rd Revised Ration Order applicable to alterations.

Mr. Strong: Well, may I submit, your Honor, that if that is going to be the case, I should like to request that my entire instruction No. 5 should be as originally given because if we are going to go into the question of alteration, I think we ought to bring out these other prohibitions which deal with the acquisition of sugar without a properly issued document, and various other contentions. [530]

The Court: I shall look at it. I suppose it ought to be given together.

Mr. Strong: Also the original of our instruction No. 6, your Honor, should be given in toto.

The Court: One of the sections that we agreed to strike out of Government's instruction No. 6 was:

"Since April 27, 1942, no person has been permitted to deliver sugar to any consumer and no consumer permitted to accept delivery of sugar from any person except upon giving up evidence covering the amount of sugar delivered."

It is the theory of the Government that the proper ration check for sugar was given, and the defendant's position is that the proper check for rationing sugar was not given. Is that not right?

Mr. Strong: In effect, that is.

Mr. Carr: The check, in effect, was given under the ration order, yes, your Honor.

The Court: What is the defense's position, Mr. Carr, so I will get that clear?

Mr. Carr: With respect to—

The Court: Receiving sugar. Defendant says that the John H. Ziegler Company received the sugar but did not deliver a proper sugar check.

Mr. Carr: Well, our position is simply this, your Honor: [531] that the check was altered after it was passed or delivered and that under the ration order the person holding it is required to return it. And this defendant cannot be guilty of an offense when that person transmits it on in violation of the order.

The Court: No. As he says in his testimony, he did not give a proper ration check; and still he received the

sugar. He said, "That is not a proper check because it is merely signed by himself and I had no sugar account."

Mr. Carr: Well, that is the trouble, your Honor. That is not the charge in the second count.

The Court: No. The count is that he delivered a proper check and it was overdrawn.

Mr. Carr: May I just refer to that, your Honor?

The Court: Yes.

Mr. Carr: The second count charges that it is a violation of Section 2.9 of the general ration order No. 8, which reads:

"No person shall receive. . ."

Now, I don't have that No. 8 here.

At any rate, it alleges that they willfully received a rationed commodity from the Union Sugar Company in exchange for a ration document, to-wit, a sugar ration check.

In other words, our position is that this was not a sugar ration check.

The Court: That is it. [532]

Mr. Carr: Then it says:

". . . drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler. . ."

The Court: That is right.

Mr. Carr: Of course, our contention is there that it was not a ration check at all.

The Court: That is right.

Mr. Carr: Then it goes on to say:

". . . when said defendants knew and had reason to believe that said ration document was not validly issued because the said West Coast Supply Company did

not have a sugar ration bank account . . . with a balance . . . sufficient to cover. . .”

The Court: That is right.

Mr. Carr: Now, our contention is that now the case has developed that there was no ration check account because Ziegler was not a depositor.

The Court: So he received sugar without giving a ration check?

Mr. Carr: No, that is not the offense charged. There is a section that they could have charged him on as to that, your Honor.

The Court: It says here “there was no check given.”

The defendant says he did not have a proper ration check; he just wrote a check with his name. There is evidence both [533] ways, of course, that is, evidence from one of the brokers that he authorized his name to be placed on the check.

Mr. Carr: You see, if the court please, we are being juggled between two offenses. In other words, we are charged specifically here, if you will look at the information—

The Court: Then it seems to fit together because if the defendant had been charged with having not given a ration check, then the defense’s point would be, I suppose, “Why, I did give it and told them to fill it in. I just omitted to put the name ‘West Coast Supply Company’ on there.”

Then it would complete the act under the first charge, would it not, Mr. Carr?

Mr. Carr: My contention is, your Honor, it was not a ration document. There was no balance; there was no deposit.

The Court: It was not a ration document if he did not authorize, as one of the brokers says, the name "West Coast Supply Company" to be written there.

Mr. Carr: Well, I see what your Honor has in mind.

The trick of it is this, of course: putting the West Coast name on there, it seems to me, could not create the offense. The Government has to allege and prove that it was actually drawn on that account.

Now, I assume, your Honor, that there might be a civil authority—I see what your Honor is driving at. But that is not our theory. Our theory is that the Government has to go [534] to the proof as against Ziegler that he had a ration account, and this check was on that account and there was an overdraft and he received sugar knowing that it was an invalid ration document in that respect.

The Court: They claim it was valid but the account was overdrawn.

Mr. Carr: That's right. That is exactly right. But that is exactly why we say the case cannot go to the jury on that theory because it is not in line with the allegations of the information.

In other words, your Honor, if I may take one second, here is where the confusion is:

They started out in their information, and in Count Two they put two sections showing their doubt about the matter. They first put Ration Order No. 8, 2.8 and 2.9.

Well, they marked out 2.8. 2.8 is more or less the theory your Honor is discussing now. So what they have done is they have focused their complaint under 2.9. This is not just a simple charge, your Honor, of receiving sugar.

The Court: The whole theory of the Government is very clear to me.

Mr. Carr: It is an overdraft, that's right. And I submit—

The Court: And the defendant here drew, as he says, a ration check that was void to secure sugar on a void check. [535] And he says, "I had no account." I believe his testimony is that it was up to the broker whether or not he wanted to accept it, that that check was valueless.

Is that not it, Mr. Carr? Then the broker says, one of them at least, that "It is not complete"; and Mr. Ziegler said, "Well, fill it in with the name of the West Coast Supply Company."

Now Mr. Ziegler denies that. He says he did not give any authority to fill in the name of the West Coast Supply Company.

That is an issue for the jury because I take it that if Mr. Ziegler took the check back or if he went up there and said to his secretary, "Just write the name 'West Coast Supply Company' in there," I suppose that would be sufficient.

Mr. Carr: Well, the point—I don't want to impose on your Honor.

The Court: All right.

Mr. Carr: But the point is this: we are caught in a jockey between two alleged offenses here now, and we are going to the jury with just the simple proposition that if he gave some kind of a piece of paper and it was not a ration document and he got sugar, he is guilty.

That is not the offense charged here, and that is the thing I want to avoid. I am afraid that that is the impression that the jury is going to get unless we are very

specific [536] about that because it is very confusing even to me.

The Court: Oh, no. The evidence is very clear that Mr. Ziegler attempted to get sugar by an invalid rationing order, and he so stated.

Mr. Carr: That is 2.8, your Honor.

The Court: He signed that check knowing that he had no account, no sugar account, and that the West Coast Supply Company did not authorize the bank to honor that and because he did not write, did not authorize the writing of "West Coast Supply Company" on that check.

Had he done that, well, then, of course it would be a clear question of whether or not there was an overdraft.

Mr. Strong: May I submit, your Honor, in connection with this, your Honor and counsel also look at Government's proposed instruction 6 and 6-C which are intended to be applied to this proposition?

Mr. Carr: Well, if you give them 2.8, I simply can't see—

The Court: Wait until I get the one called to my attention. I have 6-B. Is that the one to which you are calling my attention?

Mr. Strong: 6-B and 6-C, both.

The Court: Yes.

Mr. Carr: Oh!

Mr. Strong: May I say to your Honor— [537]

The Court: Yes.

Mr. Strong: —the reason I am giving 6-B is that the defendant has added 34. 34, in my opinion, does not state the law. Consequently, I have reframed it to include 6-B and 6-C. But it all goes to the same basic

proposition of this issuance of checks which the defendant says are not valid checks because somebody else does something.

We are going to bring in here the problem of whether somebody else's act is a proper one or not. Then I think the entire field of whose acts are proper and what kind of acts are improper should be gone into so that the jury is not left with the impression that the wrongful act by the issuance of a piece of paper can become rightful because of something done by the receiver of that piece of paper.

If the question of alteration, the jury might become very confused; simply because the broker did something wrong and that that completely whitewashes the defendant, that, of course, is not the law.

Mr. Carr: That is not our theory either.

The Court: Well, gentlemen, let us then take up in order the defendant's new instructions.

Mr. Carr: Are we taking the Government's or the defendant's first, your Honor?

The Court: We will take the defendant's because we may be able then to modify the two if we find they are in conflict. [538]

Mr. Carr: Very well, sir.

The Court: Which is your first one, Mr. Carr, that you propose to change?

Mr. Carr: Incidentally, your Honor, before you start on that one I should like to call your attention to instruction No. 17. The court did not rule on that, one way or the other.

The Court: 17?

Mr. Carr: 17, your Honor.

The Court: All right, wait until I find it.

Yes. Now I have 17 in front of me, Mr. Carr.

Mr. Carr: You will remember, your Honor, I wanted to cut out at the end of that instruction “. . . or that he was authorized by the defendant West Coast Supply Company to issue . . .” because I felt that that probably created a confusion in the matter of agency. Your Honor said something, I believe, about not being satisfied with the instruction.

I think that is covered. I might withdraw it to save your time, your Honor.

The Court: All right.

Mr. Carr: It was probably covered.

The Court: Was there any other one, Mr. Carr, that you were holding up?

Mr. Strong: 19.

Mr. Carr: I have a list here showing exactly what the situation was, your Honor. [539]

Here is the situation, as I recall it, your Honor—

The Court: No. 37, Mr. Strong, has been substituted for 19.

Mr. Strong: No. 37 is the defendant's substitution for 19.

The Court: That is right.

Mr. Strong: Government's instruction No. 4 is a substitute for both 19 and 37.

The Court: Government's old instruction No. 4?

Mr. Strong: Just Government's No. 4, the new No. 4.

The Court: Let us see. Yes, I read both of those.

That is my interpretation of the law; and, of course, Mr. Carr takes exception to that statement of the law proposed in Government's instruction No. 4.

Mr. Carr: No. 4, your Honor? Well, of course, that is, as your Honor points out, just exactly contrary to our position on that.

The Court: I think that is the law, Mr. Carr. My investigation of it shows that. That is a very important matter on it for you, and I think you ought to make the record clear on it, addressing yourself now to No. 4.

Mr. Carr: Yes. Addressing myself to Government's requested instruction No. 4, we raise our objection that on the constitutional issue that we have heretofore raised that the emergency no longer existed and the power did not actually exist at that time. I believe that covers it. [540]

The Court: Yes, with your other objections on that matter.

Mr. Carr: Yes.

The Court: All right, let the record so show. Government's instruction No. 4 will be given.

Mr. Carr: Except that I don't like the phrase "no effect." It seems to me there is a better phrase. That "no effect" carries a connotation and implication that the OPA just stayed as it was when, in fact, it did not.

One of the questions in this case, your Honor, is his good intent by reason of the OPA act dying.

Mr. Strong: As to that, may I state, your Honor, as I think I pointed out at the beginning of this trial, our position is that there are two separate things here. One is the law, which continued sugar ration, and the other is a question of the agency to enforce it.

The Court: Yes. I have heard that long enough, gentlemen, in this and other cases before me.

Let the record show the proposed change is refused. Now, which is the other one?

Mr. Strong: No. 19 was the other one.

The Court: The other one was No. 19, and I refused No. 37.

Mr. Carr: You have not refused 37, have you, your Honor?

The Court: Yes.

Mr. Carr: That is nothing more than a straight factual [541] statement of the—

The Court: Absolutely contradictory to No. 4.

Mr. Carr: No, it is not, your Honor, not contradictory at all, if I may respectfully suggest.

The Court: All right.

Mr. Carr: I hope your Honor does not understand me to dispute you. I am just disagreeing.

The Court: Go ahead.

Mr. Carr: But this new one No. 37 says that the President vetoed the bill extending the Office of Price Administration act.

This goes to the question of intent, your Honor, this instruction. In other words, the defendant claims here and his theory is that he believed that when this act died that the whole OPA died with it.

All I want the jury to know is that it is a fact that the OPA did die at that time under the price control provisions of that Act.

The Court: But it did not effect sugar.

Mr. Carr: That may well be. The other instruction is not inconsistent with it. But I do want them to have that instruction.

Then it goes on to say that the President promulgated and signed Executive Order No. 9745—I put that in—which provides that the Office of Price Administration

was directed [542] to continue to exercise all powers and functions. I put that in purposely because that is the Government's theory.

" . . . (it) did not terminate by reason of the termination of the Emergency Price Control Act and such powers that were delegated to the OPA pursuant to the Second War Powers Act."

In other words, that is a better instruction, your Honor, than No. 4. It tells the jury that the President did this but the powers remain. Then it merely sets up that the Executive Order was signed and was filed in the Federal Register.

I submit that that goes to the very heart of our case on the question of intent.

Mr. Strong: Your Honor, I think that No. 4 says in fewer words the same thing, and the jury will be less confused with No. 4 than No. 37.

Mr. Carr: Well, they will be less confused in favor of the Government, I will quite agree.

Mr. Strong: They will be less confused as to the actual state of the law, your Honor. Also No. 37 assumes certain things, one of which is that the order was not filed until July 2, 1946, was not published until that date.

I don't know when it was published. There may be a date on the document, but I don't know what difference it makes in this date. That 10:32 a. m., for example, is Washington, D. C., time; and I think Mr. Carr will agree that that is [543] 7:32 a. m., Los Angeles time. So that is misleading to begin with.

Mr. Carr: If you want to put in the different times, all right.

The Court: Well, you see the second paragraph of instruction No. 4:

"I further instruct you that on June 30, 1946, the President of the United States issued an Executive Order by which he continued in effect the Office of Price Administration as the enforcement agent for that purpose"

Mr. Carr: I submit, if the court please, the defendant's requested instruction No. 37 goes right to the heart of the matter. We are not saying in that instruction that there was no OPA. We are confessing it. But we are setting up the factual legalistics so the jury may determine the intent in the case.

Mr. Strong: That is a matter, I submit, your Honor, for argument to the jury; and on the basis of Government's instruction No. 4, which covers it, Mr. Carr can argue it. I think that No. 37 is confusing. It is too legalistic in its terminology, and the jury should not be instructed in terms of statute to the point where they do not understand exactly what is happening; whereas, Government's instruction No. 4 states what the law was as of that date and states in terms [544] understandable to the jury and commensurate with the law.

Mr. Carr: I should like the record to show that I am very vehemently insisting on this instruction. I think it goes to the very heart of the case.

The Court: I want the record to so show to protect your rights, Mr. Carr.

Mr. Carr: You are refusing that one, your Honor?

The Court: Yes, and exception is allowed to the defendant.

Mr. Carr: I should just like to further point out, just to call your Honor's attention to the fact, that respecting the executive order it is already in evidence in this case; so that instruction is merely telling the jury about the violation of that.

The Court: That is one of the reasons I am not giving it because I do not believe it is proper to put in an instruction all of the evidence.

What is the next one?

Mr. Strong: The next one that was passed is defendant's instruction No. 22 and the Government's newly requested instruction No. 8 which is intended to cover that situation.

Mr. Carr: Instruction what? 22?

Mr. Strong: Your instruction No. 22.

The Court: I have on defendant's instruction No. 22 marked "hold" from our other conference. [545]

Mr. Strong: Yes.

The Court: Now, which do you want it compared to, Mr. Strong?

Mr. Strong: New instruction No. 8, the one that I sent in this morning.

May I say in that connection that I have added lines 17 down to 24 only because of the discussion yesterday. It is still my feeling today that they do not have any place in this instruction. However, since your Honor indicated that he thought possibly a re-draft, more in conformity with the terms of the statute might be preferable, I have inserted those lines. However, my basic desire is to have the instruction as it stands up to line 16 and not including the balance. If your Honor feels something should be said about presumption, then only it is desired that the rest be inserted.

Mr. Carr: May I be heard from at this point?

The Court: Yes.

Mr. Carr: I submit that instruction No. 8 is erroneous. It is right in the teeth of the Flannagan case, which is a Ninth Circuit case, 145 Fed. (2d) 740.

Mr. Strong may have some opinions about the interpretation of the Act, but the Ninth Circuit has said in very plain language that it is such a presumption that is rebuttable.

I am taking my instruction on the whole theory from the Flannagan case. If the Ninth Circuit is wrong, Mr. Strong is right. [546]

Mr. Strong: I submit that the Ninth Circuit is right, your Honor. The only difference is that the Ninth Circuit has not said in the Flannagan case what Mr. Carr says it said. It does speak of a rebuttable presumption, but it does not say that knowledge is the presumption which is rebuttable.

I submit to your Honor that the statute on its face provides what presumption is rebuttable. It delineates it in four separate sections: A, B, C and D.

I further submit this to your Honor: that the Ninth Circuit could not have meant what Mr. Carr says, for this reason: that if there is a rebuttable presumption as to knowledge, which takes the place of constructive notice, which is permitted under the Federal Register Act, then the Federal Register Act is a piece of valueless legislation.

Obviously the Federal Register statute, which permits constructive notice by way of publication, was intended to take the place of any kind of knowledge, presumptive or otherwise; and if that constructive notice can be rebutted by merely showing that an individual did not, in fact,

know about the law, then there is no constructive notice permitted by the law and the statute is invalid.

Mr. Carr: I suggest we get the case and read it again, your Honor.

To me it is just as plain as the hand in front of you.

Mr. Strong: May I read to your Honor from another [547] decision that I have found since?

This is the case of *Henderson v. Baldwin*. It is found in 54 Fed. Supp. at page 438. It is a 1942 decision. On page 439 the paragraph numbered (1) reads as follows:

"The only defense offered is that defendants had no precise knowledge as to the rent regulations prior to the institution of this suit, and that as soon as they acquired this knowledge, they have complied with these regulations, and have refunded all rentals collected by them in excess of the rate of March 1, 1942. This certainly is not a good defense. It was their duty to know what the rent regulations were, and to comply with them."

Then the court goes on to say:

"The designation of Erie County, Pennsylvania, as a defense-rental area was filed with the Division of the Federal Register on April 28, 1942, and was published in the Federal Register on April 28, 1942. . . . Maximum Rent Regulation 28 covering the Erie County defense area was issued and filed June 30, 1942, and was published in the Federal Register on July 1, 1942. . . . Section 307 of the Federal Register Act, 44 U. S. C. A. 301-314, provides that filing of a document with the Division of the Federal Register gives constructive notice of the contents of the document to all persons [548] affected thereby."

I think that that is a correct expression, your Honor, of what Section 307 does; and I think also that the Flanagan case is not contrary to this.

Mr. Carr: I submit, in final, on that, your Honor, that this whole case turns, so far as willfulness is concerned, on the question of intent.

Counsel is intending that you should instruct this jury as to whether defendant knew about that order or not on July 1st. That is wholly immaterial. He is supposed to know it; and that, I submit, is not the law.

Mr. Strong: I submit, your Honor, that the Government is perfectly willing to have this point taken up on appeal by Mr. Carr.

The Court: Well, I try to avoid appeals.

Mr. Carr: Yes, at our expense, I am sure.

The Court: I try to avoid appeals if I can get the law correct.

In instruction No. 8 the last part which states "that it creates a rebuttable presumption," from there on has not the defense a wide-open door to show by the testimony here, from their theory, that the presumption has been rebutted?

Why should I go to the evidence?

Mr. Carr: Well, your Honor, you are stopping too short. You are telling the jury there is rebuttable presumption, but [549] you are not telling them in what way.

The Court: Am I going to put the evidence in here?

Mr. Carr: If you let me tell them what the law is, why, I certainly will. But I am not supposed to do that.

The Court: No, I will stop you.

Mr. Carr: I am not supposed to do that.

The Court: I will stop you and I will stop any lawyer who attempts to state the law. But you can say that "if the court instructs you so and so, then this follows." That is proper.

Mr. Carr: I know. But the rules have changed, your Honor. That used to be the case. Now we are arguing after your Honor has agreed on the instructions; you tell us what the law is.

The Court: That is right.

Mr. Carr: It is changed now. We used to be able to get up and speculate.

The Court: Oh, yes.

Mr. Carr: We don't do that now.

The Court: Oh, yes, you cannot state the law; but you can tell the jury, "if the court instructs you so and so . . ."

Mr. Carr: I want the court to instruct the jury as they say in the Flannagan case—

The Court: I am saying it in the same instruction, and you are arguing to the jury that "we have rebutted that as shown by the testimony here that this defendant has rebutted [550] that presumption." Then you make your argument.

Mr. Carr: This instruction No. 8 is a very broadly drawn instruction. It leaves me with a very distinct impression, from the first few sentences that the law does not require that the defendant have actual knowledge of the provisions of the Second War Powers Act, and then it jumps down and says "all persons, including those who use or deal in sugar, are charged by law with notice of the statute."

Then it jumps down and says, "but the document creates a rebuttable presumption."

Of what?

The Court: Rebuttable presumption with reference to that particular statute.

Mr. Carr: Well, it creates, as I understand this Flannagan case, this rebuttable presumption, and that is that he did not have any actual intent because he had no knowledge of the particular filing.

The Court: He said that on the stand.

Mr. Carr: That's right. That is the reason I want this instruction. I think that one is an erroneous instruction, your Honor.

The Court: No, I think the instruction is correct. But I am not going to give the last sentence, Mr. Strong, in this instruction which I think is improper:

"I now instruct you that there is no evidence in this [551] case to rebut that presumption, and that, consequently, the presumption is controlling in this case."

Mr. Strong: I submit, your Honor, that that is the case.

The Court: No.

Mr. Strong: May I read to your Honor what rebuttable presumption is, which is the only one permitted in this case?

In 44 U. S. C. A., Section 307, after detailing that publication in the Federal Register shall "be sufficient to give notice of the contents of such document to any person subject thereto or affected thereby," it goes on to say:

"The publication in the Federal Register of any document shall create a rebuttable presumption (a) that it was duly issued, prescribed, or promulgated . . ."

There is no evidence in this case rebutting the presumption that it was duly issued, prescribed or promulgated.

“ . . . (b) that it was duly filed with the Division and made available for public inspection at the day and hour stated in the printed notation”

There is no evidence in this case to the contrary.

“ . . . (c) that the copy contained in the Federal Register is a true copy of the original”

There is no evidence rebutting that in this case.

“ . . . and, (d) that all requirements of this chapter and the regulations prescribed hereunder relative to such document have been complied with” [552]

There is no contrary evidence in this case, your Honor. That is why I put in the last sentence. But if your Honor would rather give it without that, I will agree to take it out.

The Court: That is too strong an instruction. I am not going to pass on those questions.

Mr. Strong: All right.

The Court: Let the record show that I am striking out the last sentence in Government's proposed instruction No. 8:

“I now instruct you that there is no evidence in this case to rebut that presumption, and that, consequently, the presumption is controlling in this case.”

Let the record show exception to Mr. Carr as to instruction No. 22.

Where is the next one, gentlemen?

Mr. Strong: I think the next one is No. 30, your Honor, defendant's instruction No. 30, if I am not mistaken. That was passed.

The Court: I have passed No. 30.

Mr. Strong: We object to that, your Honor.

The Court: Mr. Carr has submitted a new instruction on that.

Mr. Strong: That is No. 33, the one he submitted as a substitute.

Mr. Carr: I did not offer that as a substitute. I offered it in addition thereto. [553]

The Court: No, it was an addition.

Mr. Strong: I apologize. I thought it was a substitute.

The Court: No, it is an addition.

Mr. Strong: I object to No. 33, your Honor, for this reason—may I state my reason?

The Court: Yes.

Mr. Strong: I think that in a case where willfulness is an element, if a person goes to an attorney prior to committing the act and consults with him, that that is one of the factors to be considered by the jury in determining the presence of willfulness. But I submit, your Honor, that I have tried to recall the evidence in this case. I do not recall any evidence of Mr. Ziegler's consulting any attorney prior to July 1, 1946.

I might be wrong, but I recall none. And if that is true, then there is no use of this element entering into his willfulness and this act of issuing the checks prior to July 1, 1946.

Mr. Carr: I submit that some sugar was received, and counsel is certainly standing on the proposition that whoever received the sugar was in violation of Counts Two, Four, Six and Eight.

The evidence shows that he did consult a lawyer about that time while he was allegedly receiving the sugar.

Mr. Strong: Well, possibly the instruction, then, should [554] be reworded so as to cover all those counts

in which he committed acts subsequent to seeing an attorney and not including the count in which he is charged with committing acts which he committed prior to seeing an attorney.

The Court: Well, Mr. Carr is a very careful lawyer and he quotes the Supreme Court of the United States to justify his instruction, but he leaves out the sentence that is against him.

The Supreme Court quoted this sentence from the instruction that was approved:

“But, on the other hand, no man can willfully and knowingly violate the law, and excuse himself from the consequences thereof by pleading that he followed the advice of counsel.”

Mr. Carr just took part of the instruction. If you will turn to page 454—

Mr. Carr: I know, your Honor. But I don't propose to submit the Government's side of the case. I put in my instruction:

“Generally speaking, advice of counsel is not an excuse for a violation of law”

And that is a proper statement, I believe.

The Court: You do not agree with the Supreme Court's statement?

Mr. Carr: Well, I submit when you pick up an instruction from the court, you don't necessarily copy it verbatim. You [555] take it and interpolate it in the light you, as a lawyer, agree—

The Court: I agree with you. As a lawyer, I would take the part that was favorable to my client and I would omit the other. But the court is in a position where he is

just trying to get the instruction in accordance with the Supreme Court's position here, gentlemen.

Mr. Carr: Well, I will say this much: it certainly is the law of the land, your Honor.

The Court: Yes, exactly. I feel, gentlemen, I should follow this instruction. Mr. Reporter, will you take this? I am reading from *Williamson v. United States*, 207 U. S. 453.

"I instruct you that if the defendant Paul J. Ziegler honestly and in good faith sought the advice of a lawyer as to what he might lawfully do in the matter involved in this action and fully and honestly laid all of the facts before his counsel and in good faith and honestly followed that advice, relying upon it, and believing it to be correct and only intend that his acts should be lawful, he could not be found guilty of this offense which involves willful and unlawful intent, even if such advice were an inaccurate construction of the law. But, on the other hand, no man can willfully and knowingly violate the law, and excuse himself from the consequences thereof by pleading that [556] he followed the advice of counsel."

Mr. Carr: I won't object to that instruction, your Honor.

The Court: No, I have taken it right out of there, Mr. Carr. All right. And I am withdrawing—

Mr. Strong: May I have that limited to Counts Two, Four, Six and Eight, since there is no evidence here that he consulted an attorney prior to committing the acts alleged in Counts One, Three, Five and Seven?

The Court: That is a matter of argument to the jury. That is a matter of evidence, Mr. Strong. I am not going to put evidence in here if I can avoid it.

Defendant's instructions Nos. 30 and 33 are out.

What is the next one, gentlemen, for defendant?

Mr. Strong: Defendant's No. 34, I believe.

The Court: Yes, I have it.

Mr. Strong: The Government offers 6-B and 6-C as a substitute for defendant's instruction No. 34.

May I state to your Honor that defendant's instruction 34 I have accepted up to line 10 of the instruction, and at that point I have omitted the balance and have inserted an additional definition of "person."

That is in Government's instruction 6-B substitute. And I have added 6-C.

The Court: Mr. Carr?

Mr. Carr: Yes, your Honor. I submit that defendant's [557] instruction No. 34 is the law in that it provides the definition of "issue" in exact quotation from Revised Ration Order No. 3.

It defines the word "delivery," and then it merely says that you must find "beyond a reasonable doubt that said checks were completed when they were delivered to the person to whose account they were made payable."

That is the exact law of the ration order.

The Court: If that is the law, of course I should instruct the jury to return a verdict of not guilty. That is why I could not give the instruction.

Mr. Carr: Well, your Honor, of course I think when counsel sticks in again the word "person" in his No. 6-B, I don't see what the point is. He thinks the partnership is apparently still in this action. It is out of it. And when you come to 6-C, that instruction does not have a thing to do with this case. It is erroneous, for one thing. It says:

"You are instructed that it is not necessary for you to find the defendant did every act necessary to make out the offense . . ."

Now, if that instruction is given to the jury, I submit that is erroneous on its face.

The second part of it having to do with acting through a confederate or aiding and abetting, I don't think it has applicability to this case at all.

Mr. Strong: Your Honor, do you care to hear from me? [558]

The Court: Just a minute. Defendant's instruction No. 34 is denied and exception allowed to the defendant.

Government's 6-B will be given.

Mr. Carr: Well, I submit, your Honor, that word "person" defined again there is certainly confusing.

The Court: You see, the only reason I am leaving that in, Mr. Carr, is that the account that is involved here—and I have limited all of the evidence to Mr. Paul J. Ziegler—there is in evidence these documents and instruments with reference to the fictitious name "West Coast Supply Company." So I think the jury should have that.

The first sentence of 6-C will be stricken out. I think that is too broad a statement. And I am going to strike out the word in line 10 "confederate." That carries a bad connotation to the jury. And I am going to strike out the word "confederate" in line 11 and the word "confederate" is stricken out in line 14. As so amended, the instruction will be given and exception will be allowed to the defendant on 6-C.

What is the next one, gentlemen? It is pretty late here.

Mr. Carr: May the record just show that insofar as that instruction I don't thing I stated, your Honor, that there is no question involved in this case of aiding and abetting or involving a principal at all insofar as the statute sets forth.

We object to it because it may confuse the jury.

The Court: Let the record so show. [559]

What is the next one, gentlemen?

Mr. Strong: Which? The defendant's, your Honor, or the Government's?

The Court: I want the defendant's.

Mr. Strong: No. 35.

The Court: All right.

Mr. Strong: We object to 35.

The Court: On what ground?

Mr. Strong: It does not state the law because it provides, in effect, that if the checks were issued as they were issued in this case, according to the defendant, there is no violation. In effect it states that if the defendant simply issued them with his name on them and that is all, he is to be found not guilty. Also I do not understand the necessity of any instruction relating to what some third person has to do if he receives a check which was not issued in accordance with the law. No third person is being tried here. It is the defendant and his acts with which we are concerned, not somebody else.

The Court: I have the same objection to that, gentlemen, that I had to the other. That really is an instruction of not guilty.

What is the next one?

Mr. Strong: No. 36, your Honor.

Mr. Carr: That is refused, is it, your Honor?

The Court: Refused and exception allowed the defendant. [560]

Mr. Carr: No. 36.

The Court: No. 36, yes.

Mr. Strong: We object to 36, your Honor.

The Court: On what ground?

Mr. Strong: Beg pardon?

The Court: What ground?

Mr. Strong: On the ground that it again requires that the defendant have done every one of the acts which he says he is required to do under his technical interpretation of the statute. It demands that he be found to be a depositor specifically, although a depositor is defined meaning a person who has a ration check bank account, and a person is defined as an individual, partnership, et cetera, or any agency thereof. Certainly the defendant was an agent of the person, the depositor in this case.

Mr. Carr: It seems to me that Mr. Strong's theory of this case is that the defendant is being tried on some moral charge. I thought we were being charged with violating 15.7 (d) of Ration Order No. 3 Revised.

If that is the case under the order you must be a depositor before you can have an overdraft. It seems to me that that is just plain common sense. If I draw a check where I do not have an account, you cannot charge me with not having an account.

The Court: An overdraft. The instruction would mean an [561] acquittal:

"Unless you find beyond a reasonable doubt that he was a depositor and that the checks were drawn against his account, you must acquit on those counts."

Exception allowed the defendant.

Mr. Strong: Defendant's No. 38 is next, your Honor.

The Court: All right.

Mr. Strong: I submit that that is the same as the instruction which we discussed previously, your Honor, relating to the Federal Register, The Government instruction covered that.

The Court: Was No. 38 put in some other place, Mr. Carr?

Mr. Carr: 38 was a re-draft. I am adding it as an additional instruction. It says, "See instruction 22," your Honor. It covers the same feature; but I had anticipated at that time the other day that your Honor was concerned about some phase of it. So I drafted a couple of more interpretations and added to the instructions.

The Court: To what number, Mr. Carr?

Mr. Carr: 22. A strange thing, I have that marked "Given," your Honor. I must be in error about that.

Mr. Strong: Your Honor gave Government's instruction No. 8.

The Court: Wait a moment. I want to get Mr. Carr here.

Mr. Strong: Yes, your Honor. I am sorry. [562]

The Court: No. 22: I have that marked "not given."

Mr. Carr: Well, I had better change mine, then.

The Court: Let the record show that an exception is allowed to the defendant.

What is the next one?

Mr. Carr: No. 38 is refused, too, your Honor?

Mr. Strong: No. 39, your Honor.

Mr. Carr: I would like to get the marking on 38 first.

The Court: 39 was inserted some other place, was it not?

Mr. Carr: That is the rebuttal proposition stated in other terms.

The Court: What does that accompany?

Mr. Carr: I will find it, your Honor.

The Court: I inserted that in some other place in your instructions.

Mr. Carr: That is 22.

The Court: 39, is it not?

Mr. Carr: Yes.

Mr. Strong: That is objected to, your Honor, for the same reason as 22 and 38, and for the additional reason it deals with a lack of knowledge on the part of defendant that sugar rationing had been continued beyond June 30th. There was no discontinuance of sugar rationing at any time. That was under the Second War Powers Act, and there was no act of affirmative discontinuance by the President of rationing. It [563] just stated the effect.

Mr. Carr: That is really news to me, your Honor. Mr. Strong is really making law faster than the Supreme Court can make it.

Mr. Strong: That's impossible, your Honor.

The Court: Well, I have passed on that question: not given, and exception allowed to the defendant. I passed on that several times, gentlemen. All right.

Mr. Strong: No. 40 is the defendant's last one. We object to that, your Honor.

The Court: Where did that fit in?

Mr. Strong: That is just by itself.

The Court: A separate instruction?

Mr. Carr: Yes, your Honor. Do you have it, your Honor?

The Court: It did not fit in any place. I do not have it, gentlemen. No, I do not have No. 40.

Mr. Carr: Shall I pass it up?

The Court: Yes, please.

Mr. Carr: You have one, Mr. Strong?

Mr. Strong: Yes, I have a copy.

The Court: Let me see Exhibit 1, please.

(The court obtains document from the clerk.)

Mr. Strong: May I submit to your Honor that this instruction has nothing to do with the case as it stands in its present posture. May I add a further reason, your Honor? [564]

The Court: Yes.

Mr. Strong: The further reason is that that is not the evidence. At least one witness testified that the defendant Paul J. Ziegler told him that he was still a partner of the West Coast Supply Company. I believe that was the witness Pool from the Department of Health. In addition to that there are in evidence documents which the defendant admits he filed with the Office of Price Administration in which he, in his own handwriting, wrote that he was a partner of the West Coast Supply Company.

It is true that on the stand he says that that is not true. But at the time he wrote them there was a penalty provision on those things, and I don't see any reason why his statement on the witness stand should be given any more weight than his original statement to the jury. I think that is a question for the jury, if it is a question at all in this case. This instruction would completely remove that matter from the jury's determination.

Mr. Carr: That is the reason I proposed the change because there is not one iota of evidence, legal evidence in this case, to sustain that Mr. Ziegler is a legal partner. And the law is so well settled—I will stop if your Honor

wants me to and cite the cases—that you cannot prove agency or partnership by the acts or declaration of the agent or partner. [565]

Mr. Strong: That is the law, your Honor, as to holding the other partners to civil liability under certain circumstances. But in determining whether the defendant himself was or was not a partner, insofar as any liability may attach to him personally, without regard to the other partners, I think his declarations, certainly his written declarations, are sufficient evidence to permit a finding that he was a partner, even though such a finding may not be valid as against the other partner himself. As against him I think it would be valid.

The Court: Mr. Carr argued that matter at the beginning of the trial, and that was my reaction to the law, Mr. Carr. He could not bind the other partner by his declaration, but a partner might bind himself by holding himself out and making statements and filing reports.

That was my interpretation of the law, that he could be held himself.

Mr. Carr: Well, your Honor, a person cannot be held criminally liable for an act which is not proved. In other words, you cannot prove it is a matter of procedure. You cannot prove partnership or agency by an act or declaration of an agent or partner.

That is all the evidence the Government is relying on in this case, and I submit that it is erroneous to let the jury pass on partnership with just that evidence in. It requires additional evidence. [566]

The Court: What additional evidence, Mr. Carr?

Mr. Carr: To prove a partnership, your Honor, you cannot ever, even in a civil case, use the act or declaration of the agent or the partner.

The Court: Against the other partners?

Mr. Carr: Against any of the other partners.

The Court: Against himself only?

Mr. Carr: To establish the fact of partnership.

The Court: What about himself?

Mr. Carr: You might create an estoppel in certain circumstances against the person from his denying being a partner in a civil case, but that would not apply in a criminal case. I see your Honor's point.

The Court: That is what I was worried about when you first mentioned the law.

Mr. Carr: Well, there is no doubt about it. If Mr. Ziegler signed a note, for example, he could use the word "partner" or "agent." He himself would be estopped in a civil case from denying that. But it could not bind him and prove the fact of partnership otherwise.

The Court: I am just limiting it to Mr. Ziegler himself, by his own statement.

Mr. Carr: But in this criminal case he actually would have to be a partner in fact, and that is where I say the proof fails. There is no proof to show that he is a partner; and [567] equitable estoppel or civil estoppel cannot apply in a criminal case.

Mr. Strong: If your Honor please, there are no other partners in this case at all. That is my point: that the person who is the defendant is Mr. Paul J. Ziegler, and anything he is saying is used against him. It cannot possibly be used in this case against any other partner because your Honor has granted a motion for a verdict of acquittal as to the other partners, so that there is no possibility of any of this evidence being applied against them. And all that argument that tends to show that it can be applied against them is unnecessary.

Mr. Paul J. Ziegler is in the case. I don't see the necessity for instructing the jury that he is not a partner since it can only be held as against him and there may be some basis for finding against him as a partner, although I don't see that it makes any difference one way or the other.

The Court: There might be.

Mr. Carr: The vice in not giving this is this: Suppose the jury concluded that he is a partner; then they are saying, his being a partner, he is issuing a check carried by the account of the partnership.

The Court: Yes. The authorization I have examined carefully, Exhibit 2 of the Government. It says:

"West Coast Supply Co., 1654 Long Beach Ave. Authorized [568] signatures—Name and title (Print)—Raymond Ziegler Managing partner."

Then written in ink the signatures "Raymond Ziegler, J. H. Ziegler, Paul J. Ziegler, Paul M. Fox" and printed "Paul J. Ziegler" in pen, "Paul M. Fox" in typewriting and then "West Coast Supply Co. by Paul J. Ziegler" over "Signature of applicant."

This Exhibit 2 does not indicate, as I take it, that Paul J. Ziegler was a partner. This does not indicate that Paul J. Ziegler was a partner by this instrument.

Mr. Strong: No.

The Court: There is other evidence. I appreciate that. I think it might be confusing.

I am going to give this instruction. What is next?

Mr. Strong: Does your Honor say you will give it?

The Court: Yes.

Mr. Strong: That is all the defendant's, so far as I know.

The Court: All right. What do you have now to offer?

Mr. Strong: I have an additional one which has not been covered, substitute instructions 11 and 12.

Your Honor will recall that on instruction 11 there was some question about rewording the count phase of it. I have reworded it now.

The Court: No. 11? [569]

Mr. Strong: Yes, sir.

The Court: All right. Mr. Carr?

Mr. Carr: Well, your Honor, that has been covered. I thought counsel on Friday was satisfied with the instruction I had drawn covering that. As I recall, he said he was.

Mr. Strong: Which one was that?

Mr. Carr: Let me see. Instructions 24 and 25, as I remember.

That would be 25 in this case. So that is a repetition of that, and it has some matter in it that I question, your Honor.

The Court: No. 25?

Mr. Carr: Yes.

The Court: All right. Did you substitute something for No. 25?

Mr. Carr: No, your Honor. 24 and 25 are the two that cover the general definition of the crime.

Mr. Strong: If your Honor please, I think he is right. I will withdraw my 11 and 12.

The Court: All right.

Mr. Strong: And that is 24 and 25. That was an oversight, and I apologize for taking your Honor's time.

The Court: Yes. I have No. 25 here. I assumed that was the situation.

What else?

Mr. Strong: That is all, your Honor. [570]

Mr. Carr: May I have just one second, your Honor, to consult with my client?

The Court: Yes.

(Brief pause in the proceedings.)

Mr. Carr: Your Honor, could we have a recess for a moment? I have a lawyer, you know, for a client; and I am not under the same situation as Mr. Strong is, the whole Government.

The Court: Yes. I have had experience both ways, Mr. Carr, as United States Attorney and an attorney.

Do I understand, Mr. Carr, you are objecting to the definition of "alteration"? Do you want that in the record?

Mr. Carr: No, I am not objecting to that, your Honor. The only thing I was insisting is that you add my instruction which I think you refused under the regulation.

The Court: Mr. Carr has made some objections to some of the Government's instructions as applying to the case.

Here is an instruction that I am going to give:

"The court is giving you instructions embodying such rules of law as may be necessary to assist you in arriving at a verdict. As to some of these instructions, their applicability depends upon the light in which you view the evidence. The fact that the court has given you instructions as to a particular rule of law must not be taken by you as an indication that such rules are [571] necessarily applicable to the cause on trial or as indicating that the court considers them necessarily applicable. Where there is a conflict of evidence, the question as to

whether a particular rule of law is applicable depends frequently and solely upon the conclusion as to what the facts are; and the jury are the sole judges of the facts.

"If an instruction is applicable only if a particular situation or state of facts exists and if you find that no such situation or state of facts exists, then you should not take such instruction into consideration in your deliberations."

Mr. Strong: Is your Honor giving that for my benefit?

The Court: No, I am giving it for Mr. Carr's benefit.

Mr. Carr: That's really astounding, your giving it for the benefit of both sides, your Honor. I don't see any objection to it.

The Court: I think that it applies because you have made the most objections to the Government's instructions.

Mr. Carr: Yes.

The Court: Though I followed the theory of the Government, which, in my opinion, is correct, I shall not give it if you do not want it.

Mr. Carr: I am perfectly willing to have it.

The Court: Mr. Strong? [572]

Mr. Strong: If your Honor please, I am not quite clear now as to whether your Honor is giving that instruction in connection with my request that certain other parts of Government's instructions 5 and 6 be given which were heretofore deleted.

The Court: I am not giving it in connection with anything. I am giving it as an independent instruction by the court, unless there is objection.

Mr. Strong: Yes, your Honor. But may I ask in that connection if your Honor is going to give only that part of Government's instructions 5 and 6 which were

heretofore agreed to? Or whether your Honor has expanded it to give all of the parts which I originally included in Government's instructions 5 and 6?

The Court: 5 and 6? We will clear that up. On Friday it was agreed that Government's instruction No. 5, the first part thereof, should be out and that the second paragraph should be out.

Mr. Strong: And the fourth.

The Court: And the fourth paragraph should be out.

Mr. Strong: That is the way it stands now, your Honor?

The Court: Yes.

Mr. Strong: Yes. All right.

Mr. Carr: There is one sentence in the third paragraph out, your Honor, too, I believe. [573]

The Court: Let me see.

Mr. Carr: The last part of the sentence.

The Court: In the third paragraph?

Mr. Carr: Wasn't it starting with the words ". . . or that it must not be required in accordance with the ration order by the person tendering it"?

I thought that was cut out, too.

The Court: I do not have it on my notes. Let us get it straight, then.

Mr. Carr: I may be in error, but I have it marked that way.

Mr. Strong: There was some discussion, and your Honor left it in.

The Court: I have not marked it out, Mr. Carr.

Mr. Carr: I may have made an error about it.

The Court: The last paragraph was out, and all of No. 6 on page 1 is out. The paragraph starting at line 4, the second paragraph, is in; and the next one, the para-

graph starting at line 8, is out. The next paragraph starting with Section 22.13 (b) is out, and starting with line 25, Section 24.1 (c) "Definitions" and to the bottom of the page is in.

The top of the first paragraph on page 3 is out. "(18)" on line 7 is in, and "(19)" is out because it is duplicated.

Mr. Carr: I see. I have it marked.

The Court: That is the way I have it. Is there anything [574] else, Mr. Carr?

Mr. Strong: Then your Honor is giving on page 7 lines 22 and 23?

The Court: On page 7?

Mr. Strong: That is just the preceding page.

The Court: I do not have page 7. I have pages 1, 2 and 3.

Mr. Strong: Yes, it is marked page 2.

The Court: What is your point?

Mr. Strong: Line 22 where it says:

"By 'evidence' is meant sugar ration checks, coupons or stamps."

The Court: Yes. But I have stricken out the paragraph above it.

Is there anything else?

Mr. Strong: No.

The Court: Mr. Carr would like to have a little breathing spell. We will take a ten-minute recess.

(Brief recess.)

The Court: Stipulate the jury are present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Strong: So stipulate.

Mr. Carr: So stipulate, your Honor. I have one further [575] instruction to propose to the court.

The Court: All right.

Mr. Carr: At the request of my client.

The Court: All right.

(The following discussion had outside the hearing of the jury.)

Mr. Carr: If you will refer to instruction No. 36.

The Court: Of yours, Mr. Carr?

Mr. Carr: Yes.

The Court: Just a minute.

Mr. Carr: Yes, the defendant's requested instruction No. 36.

The Court: Just a minute. Is that in connection with some other one?

Mr. Carr: I didn't have time to write out the instruction; so I am going to ask the court to give an additional instruction. I am going to graft part on to an instruction, your Honor.

The Court: All right.

Mr. Carr: On instruction No. 36 I request the court to give down to and including—my lines are not marked—down to line 15, through and including the words “. . . it is necessary that . . .”

I propose that part and add to it this, your Honor:

“. . . you be convinced beyond a reasonable doubt as [576] to each count that Paul J. Ziegler was a depositor or that at the time of the delivery of the checks that

he drew or purported to draw the check or checks on the account of a depositor as defined above."

Shall I read that back to your Honor? It may be a little confusing now. It will now read:

"It is a material part of the charge in Counts 1, 3, 5 and 7 that defendant, Paul J. Ziegler, issued a sugar ration check, or checks. In order for the Government to sustain the proof respecting this material ingredient, it is necessary that you be convinced . . ."

The Court: Now, just a moment until I get that. Yes?

Mr. Carr: ". . . you be convinced beyond a reasonable doubt . . ."

The Court: Yes?

Mr. Carr: ". . . that as to each count Paul J. Ziegler was a depositor or that at the time of the delivery of the check or checks that he drew or purported to draw the check or checks on the account of a depositor as defined above."

Mr. Strong: On that instruction, may I be heard on that?

The Court: Just a moment. I would like to understand it.

Mr. Strong: I am sorry.

(Brief pause in the proceedings.) [577]

The Court: I will hear from you now.

Mr. Strong: Beg pardon, sir?

The Court: I will hear from you now.

Mr. Strong: The thing that I object to in the main is that clause of that phrase which begins "at the time of

the delivery" because I think that if at the time of the delivery, if it means at the time that he physically handed the check over or put it in the mail, that then the instruction is erroneous as requested. If by that they mean that a check is delivered when it is complete on its face, which would mean beyond the time at which, as one of the witnesses testified, he put in a certain insertion pursuant to authority of the defendant, that might be another matter. But if delivery here is intended to mean at the time it left the hands of the defendant, I submit, your Honor, that that is not the law because the check need not necessarily be complete at that point.

The Court: I think, gentlemen, that that matter is covered in all of the instructions I have.

It will be denied and exception will be allowed the defendant.

(The following proceedings within the hearing of the jury.)

The Court: You can understand, ladies and gentlemen, the care with which we must consider all of these matters. That is the reason that you have had some time to wait. But it is very necessary that the court and the attorneys work on [578] these matters very carefully.

The arguments have been limited to an hour and a half on each side. How much time would you care to open with, Mr. Strong?

Mr. Strong: Well, I will try to open within 45 minutes, and I will try to complete it within 15 minutes more in my closing; so I will probably limit my total time to only one hour.

The Court: You are allowed an hour and a half on each side. I am just trying to figure the time now. If

you occupy 45 minutes, that will take us until 4:30. And I think I shall recess then because it would be necessary for Mr. Carr to make all of his argument at one time, and that would keep the jury here until after 6:00 which I think is unfair to the jury.

Mr. Strong: May I take my full hour, then, in the opening? I was just trying to cut the time.

The Court: That would be a quarter to 5:00, if you desire to do it.

Mr. Strong: I will probably finish sooner than that.

The Court: Well, whatever time, of course, is left you may use in rebuttal.

Mr. Strong: Thank you, your Honor.

The Court: It is entirely up to you.

All right, Mr. Strong. [579]

OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT.

Mr. Strong: Your Honor, gentlemen, ladies and gentlemen of the jury, this has been quite a long case; and you have heard quite a lot of evidence.

As I told you in my opening statement, that at that time I was going to give you a brief outline of what I hoped to prove during the trial. Then you heard the evidence and the documents were introduced.

Now we have reached the point where it is my function to take up all these pieces of evidence that were put in as though they were parts of a jig-saw puzzle and try to put them together so as to show to you what, in my opinion, the evidence discloses here and how, in my opinion, the Government has sustained its case.

Of course, I need hardly say to you that if I say anything which you believe to be a statement of the law, I am not the one who makes any statements as to the law. His Honor will tell you what the law is, and if I say anything which sounds as though I am doing that, I am not doing it and I am not trying to do it; and you will, of course, pay attention to his Honor on the law.

In discussing the material that went into the record I shall try to recall as closely as I can what all the testimony was; and I believe that in almost every instance I can do so. But if at any time my recollection of what happened or what [580] was said on the witness stand does not agree with yours, of course yours is the controlling one. I do not intend at any time to state anything. I shall try to avoid that. If there is difference, it is simply because I do not happen to remember so well; and you will, of course, adopt your own recollection of the testimony and the evidence in the case.

What is this case all about? We have been here for a week. We have heard a lot of witnesses. A lot of exhibits have gone into the record. It begins to sound like it is a really complicated matter. The fact of the matter is it is not a complicated matter at all.

As his Honor told you, there are eight different counts in this information. The Government charges that on these eight different occasions the defendant did something which was in violation of the law. Those eight different occasions are split up. Four of them have to do with checks.

The Government charges that those checks were issued on a ration account at that time when there was not enough credit in that account to cover the checks. The

Government charges, as his Honor has told you in reading the information, as you will remember again, that that was done willfully and that it was done at a time when the defendant had reason to believe and to know that there was not enough credit in that account to cover those checks. Four of the counts, that is, four of the charges have to do with these checks. [581]

The other four of the counts have to do with getting the sugar called for by these checks. The Government charges that the defendant got that sugar and that he got it in exchange for these checks and that when he issued these checks he knew he did not have enough in his account to cover them. So he had no right to take the sugar either.

Mr. Carr: May I interrupt, your Honor? I am sorry, but the jury has not been told about there being only one defendant in the case. I do not think we ought to proceed without their being told that.

The Court: Yes, I think that is correct.

The information, ladies and gentlemen of the jury, is filed against the West Coast Supply Company and also against Paul J. Ziegler.

The West Coast Supply Company is not before you for consideration, the court having disposed of that matter; so there is only one defendant before you, and that is Paul J. Ziegler.

Mr. Strong: Now, in order to get a clearer picture of what we say the defendant Paul J. Ziegler did, what we say the evidence shows that he did, you are to carry in mind what the defendant Paul J. Ziegler was interested in, as disclosed by the evidence here.

You will remember that the defendant Paul J. Ziegler was anxious to get sugar, as he says for the company known as the "Paul J. Ziegler Company." [582]

I believe he admitted that he is one of the partners; that he and his father are partners in this Paul J. Ziegler Company, and he wanted to get sugar.

The Court: I thought it was the "John H. Ziegler Company."

Mr. Strong: John H. Ziegler Company is what I meant.

The Court: That is not what you said.

Mr. Strong: John H. Ziegler Company. I am sorry if I made a mistake. I did not intend to.

During the year 1946, in May and June and before that, Paul J. Ziegler talked to various brokers about the availability of sugar to him, if and when the OPA went off. So he was trying to get sugar all that time.

As you recall also, the West Coast Supply Company, which is no longer a defendant in this case, had a ration account at the Union Bank and Trust Company. The persons who were permitted to draw checks against that ration account included the defendant Paul J. Ziegler. And, as you also remember, the West Coast Supply Company consisted, I believe, of the brothers of the defendant Paul J. Ziegler. So that you have the brothers in the company known as the "West Coast Supply Company." And then you have the father and Paul in the company that is now known as the "John H. Ziegler Company."

I believe that Paul J. Ziegler also told you that the John H. Ziegler Company was doing the manufacturing; that originally it was a department of the West Coast

Supply Company [583] and then later on it was taken off as a separate company: the John H. Ziegler Company.

So that what it boils down to in the end, the West Coast Supply Company has a sugar ration account with the Union Bank and Trust Company; and Paul J. Ziegler can draw on it. He is one of the authorized signers on checks.

The John H. Ziegler Company did not have any ration account any place, and Paul J. Ziegler wants sugar. That gets us down to July 1st.

On July 1st Paul J. Ziegler buys some sugar, puts in orders. He calls up brokers, puts in orders for 1,300,000 pounds of sugar.

According to the undisputed testimony here in connection with the purchase of that sugar there were certain pieces of paper that went out. You have examined them, I believe. They are Government's Exhibts 3, 4, 5 and 6.

Those pieces of paper were printed showing them to be so-called ration checks of the Office of Price Administration. They had numbers on them written in ink, the date 7-1-46. Then each of these pieces of paper calls for the transfer of sugar to the ration bank account, and on each check there is inserted the name of the sugar seller.

These various sellers, vendors, from whom Paul J. Ziegler was buying 1,300,000 pounds of sugar are shown on the pieces of paper. [584]

Coincidentally these four checks add up to 1,300,000 pounds of sugar. I believe the defendant also admitted that he signed the checks "Paul J. Ziegler." That, as I said, is one of the signatures that can be used in drawing

sugar ration checks on the West Coast Supply Company account.

So there is not any dispute about the fact that these four checks exist. There is no dispute as to Paul J. Ziegler's signing them.

Mr. Ziegler tells you that it is true he signed them but he did not put in the words "West Coast Supply Co." In one instance, as I recall, one of the persons who took the order for sugar testified that Mr. Ziegler handed him the check to cover that order. My recollection is that that was the check for 600,000 pounds of sugar. That individual also testified that at the time he got the check the name "West Coast Supply Co." was not there. That is one instance.

In two other instances the persons who sold the sugar, the brokers, testified that the name "West Coast Supply Co." was on the checks when they got them. They never made any insertions. That is the way the checks came.

In one instance the broker testified at first that the name was on it. Then on cross examination he remembered, after being asked, that the name really was not on there but that what happened was that he talked to Paul Ziegler when the check came in and he wanted to return the check because [585] it did not say "West Coast Supply Co."

You remember that testimony. I think that was Mr. Barry who was here with his sister.

As you recall, Mr. Barry testified that he spoke to Paul Ziegler on the phone and that Mr. Barry wanted to return the check, and that he was authorized by Mr. Ziegler to insert the words "West Coast Supply Co." on the check.

Mr. Carr: I submit there was no evidence that he wanted to return the check. I ask counsel to be accurate.

The Court: Those are matters of argument. Ladies and gentlemen of the jury, you are the sole judges of the facts; and if counsel on either side makes a statement of facts with which you are not in accord, you will remember the evidence and decide it according to the facts. All right.

Mr. Strong: Whether he did or did not say that—and you will use your own recollection—the fact is that he also testified that Mr. Ziegler authorized him to add the name “West Coast Supply Co.” to that check. That was done.

That was step No. 1.

Step No. 2 is getting the sugar. You will recall all these various documents which were introduced in evidence which show the sale and shipment of sugar and the delivery of sugar to the West Coast Supply Company. And you will recall the young man who testified that he was the one who wrote on here “West Coast Supply Co. by Robert A. Russell.” [586]

Then he said that he was not working for the West Coast Supply Company; that he was working for the John H. Ziegler Company. You will also recall that one of the partners in the John H. Ziegler Company is Paul J. Ziegler.

The Government charges that Paul J. Ziegler got sugar without proper ration evidence in return for its being issued.

I think there is no possibility of doubt as to the fact that Paul J. Ziegler got the sugar. Whether it was originally invoiced to the West Coast Supply Company and then came to him later, or whatever the internal

maneuvers were, I don't know; and it doesn't make any difference.

The fact is he got the sugar and he is also the one who issued those four checks to get the sugar—I am sorry—those four pieces of paper to get the sugar.

This was not a windfall. It was not as though he was not expecting the sugar. He wanted it all along.

You will remember he was trying to get it all along. On July 1st that is how he went to get it.

You will recall also that the John H. Ziegler Company has no quota for sugar ration coupons or points. The only one that has any sugar ration quota is the West Coast Supply Company, so that the John H. Ziegler Company and Paul J. Ziegler could not get any sugar unless they had ration currency.

You will recall also that the first man who saw Mr. Ziegler on July 1st in the morning was this fellow Leland who came down [587] with the telegram. Part of that telegram, which he read to Mr. Ziegler, to Paul J. Ziegler, was to the effect that sugar rationing was continuing in effect, unchanged.

That was the man to whom Paul J. Ziegler handed the check or the piece of paper for 600,000 pounds of sugar.

Later on that same day Mr. Ziegler purchased the other sugar, and apparently these pieces of paper, which I think are checks, went out covering the transaction.

Now, ladies and gentlemen, what difference does it make, if any, what these internal maneuverings were? The fact is that these pieces of paper, purporting to be ration checks, were issued by Paul J. Ziegler. The fact is that he did it to get the sugar. The fact is that he got the sugar.

That is all the Government charges in the full eight counts of the information: that he issued these checks against an account which did not have a balance to cover them and that he then took sugar for which he had not issued any valid ration currency.

As to whether the account had enough balance, well, you will remember the testimony of the person who represents the bank; and his ledger sheets are in evidence. You will examine these ledger sheets, and you will find that there was not enough balance in the West Coast Supply Company accounts, all three of them put together; there wasn't enough balance to cover even the smallest of these four checks. [588]

Then if you will examine it, you will find that, as a matter of fact, the smallest one was not the one that came in first. It was the 600,000 pound one, and the others came in subsequently.

Then you will recall that man also testified that when the 600,000 pound check came in and he saw there was not enough balance in the account, he called up Paul J. Ziegler. There was some conversation on a Saturday. There weren't enough people there, or something. And then on Monday or Tuesday there was another conversation. But the sum and substance of the conversations was that the bank was told, in effect, to post it as an overdraft. "Just post it as an overdraft"!

I could go on and discuss this evidence with you for much more time than I have allowed for myself. But I don't see any point to it. I don't see the point in belaboring something that is crystal clear. I do not see the necessity of my persuading you or telling you or attempting to show you how the evidence discloses these various machinations followed by Paul J. Ziegler to get the sugar.

There is no use in my going into all the details of how this thing was issued, and what difference does it make whether Paul J. Ziegler put the name "West Coast Supply Co." or he did not put the name "West Coast Supply Co."? Is it not clear that that is what he intended be done with these checks: that they be drawn against the account of the West Coast Supply [589] Company?

Is it not clear that he knew that he could not get sugar without these checks? Else, why did he draw them in the first place?

He says he thinks that the process of rationing was over. If it was over, why did he issue these checks? Why not just buy the sugar without them? And even if it were not clear on the face of these checks as to whether the name "West Coast Supply Co." was or was not in there, do you not think that the mere omission, the deliberate omission of that name from four different checks, does that not indicate to you that that was done purposely, with the deliberate intent of having those checks go out as they were?

Does it not indicate to you that he knew precisely what he was doing because of his very great carefulness, on his own testimony, not to insert the name "West Coast Supply Co."?

This is not an oversight, in other words. Maybe it would be an oversight that you might have in one case, but this was omitted deliberately.

For what purpose, I ask you, ladies and gentlemen?

I do not care what Mr. Ziegler's relations are with the West Coast Supply Company. I do not think it makes the slightest bit of difference. And when you listen to the instructions from his Honor, you will find the law governing this thing.

One of the important things here, however, is whether Mr. [590] Ziegler acted willfully. That he did issue these documents nobody can possibly dispute, and I don't think he does.

That he did get this sugar as the John H. Ziegler Company and that he is a partner in that company, there is no dispute as to that either. So he got the sugar and issued these documents, these pieces of paper, as he calls them.

But it has to be done willfully. And his Honor will give you a definition of "willful."

I think the evidence pretty clearly shows that Mr. Ziegler was acting not only willfully but deliberately and with a specific intent to get around any possible law that might be in existence.

I will show you why. First of all, as he told you, he is a lawyer.

Secondly, you will remember he worked for a ration board.

Thirdly, you will recall he testified that he spent a large part of his time in working on just regulations of this agency and that agency, all the agencies. That is what he spent a lot of time on.

Then he himself admitted to you that he was anxious to get sugar all the time for the John H. Ziegler Company, but he couldn't. He could not. And he didn't have the ration account, neither for himself nor the John H. Ziegler Company.

Then you will remember Mr. Loud of the Office of Price Administration testified here something to the effect that Mr. [591] Ziegler was up there on some matter and that Mr. Ziegler indicated to him that he was going to get sugar.

Mr. Ziegler said on the stand, No, he never said that.

But the fact of what he was doing completely belies his own statement because it is exactly what he was doing all the time. He was trying to get sugar, and that is what he was after all the time: to get sugar. That is why he issued these four pieces of paper: to get sugar, not to just pass documents from one hand to another.

Then in the morning, as I said, Mr. Leland read that telegram to him. So even if Mr. Ziegler had some idea—I don't know where he could possibly get it—that the Second War Powers Act was off and sugar rationing was off, if he had that idea, Mr. Leland put him on notice that morning when he went over there and read the telegram; and that is when Paul Ziegler gave him that check. He told the bank to charge it off as an overdraft, you will recall, and the sugar has never been returned.

The checks were received; they went through the bank. The bank officer testified that they sent the monthly statement and nothing was returned.

I don't think there is any question as to his knowing what he was doing. I think that that is exactly the thing in this case. He knew so well what he was doing that he tried to wiggle this way and that way and any way he could possibly [592] wiggle to get that sugar, although he knew he was not entitled to get it, although he knew that he did not have any ration account; that he could not draw against any ration account except the West Coast Supply Company's.

That, I think, is precisely what is shown here. You heard Mr. Ziegler testify. One thing that impressed me very much—I don't know whether it impressed you or not, but it certainly impressed me—that in trying to get something from the OPA for a long time back—1945—

he wanted to get some allotment of sugar from the OPA. He used the word "partner—West Coast Supply Co."—when he admits that he was not a partner.

Mr. Carr: I am going to assign this form of argument as error and prejudicial.

The Court: Let the record so show.

Mr. Strong: Now, on another occasion on these documents, which you can look at yourself—you will remember his testimony—he did not hesitate to call himself a partner in the West Coast Supply Company for the purpose of accomplishing the result that he sought by the use of those documents. That did not stop him in the least.

I think that that demonstrates his character, if nothing else does. I think that that is your answer to every one of the acts here.

Mr. Carr: At this time I wish to assign that as error, [593] your Honor. He is referring to the character of the defendant. The defendant's character has not been placed in evidence, and I specifically assign that as error and move for a mistrial.

The Court: Let the record show the statement of counsel.

Mr. Strong: Consider all those things when you are examining the facts as to the issuance of those pieces of paper.

Consider them when you are trying to figure out—although I don't know what you need much to figure here, frankly—as to why he did it the way he did. And consider those facts when you are considering every one of the defendant's statements as to why he thought or knew what the law was or did not think, or whatever it was. I don't remember. You recall the statement, I am sure, much better than I do.

But remember—remember always—that the checks were issued. Whether they were issued in the form he says or some other form, those documents went out in connection with the purchase of that sugar; and Paul J. Ziegler, a former member of the ration board, a person who was handling these matters on behalf of the West Coast Supply Company, as he himself testified—Paul J. Ziegler was the man issuing these pieces of paper in connection with that sugar and that Paul J. Ziegler is now or was at the time of these incidents, as he says, a partner in the John H. Ziegler Company and that the John H. Ziegler Company, with Paul J. Ziegler as partner, got that sugar, [594] regardless of whether it was consigned to the West Coast Supply Company or not. They got that sugar, and they issued no valid ration evidence in return for it.

As I said, when I started, I could go on analyzing this for hours. But I see no point to it. I see no point to bringing before you something that you are undoubtedly as well aware of as I am, if not more.

The Court: I do not suppose, Mr. Carr, you want to break your argument up?

Mr. Carr: I don't mind one way or the other, your Honor. I am willing to go on now or not go on. It is entirely up to your Honor.

The Court: If you care to use any time now, you can continue in the morning and finish your argument in the morning.

Mr. Carr: I will use part now.

The Court: All right, you use whatever part you desire, Mr. Carr.

ARGUMENT ON BEHALF OF THE DEFENDANT

Mr. Carr: I do not like this claustrophobia feeling, your Honor. May I move this lectern?

The Court: Certainly. The bailiff will do it for you.

Mr. Carr: If the court please, ladies and gentlemen of the jury, there are so many things involved in the trial of a criminal case that it is difficult for even a lawyer with years of experience or even a judge to nestle in or corner the various [595] angles of a lawsuit so that you may fully comprehend the issues.

I do not say that to reflect upon you. I am not here to cajole you, to beg with you, plead with you. I am here as a lawyer, as an American citizen, with the privilege—and a great privilege—to stand here and talk to you as common sense human beings, as men and women.

I may be in error in some of my conclusions; but I am certainly sincere when I try to prove to you that the facets of this case are such that it does not in any way warrant a conviction of this defendant, not on one count.

Now, you know, we sometimes lose sight of the real thing in a trial. It is not for me to stand here and try to impress you on forensic ability or whether or not I have the intellect to deceive. That is not the question. The question here is one of justice and equity and decency, of whether or not a man is charged with a specific offense and whether the Government has proved that offense beyond and reasonable doubt.

I do not say this to criticize Mr. Strong in his argument. But it is just such arguments as he makes that will convict an innocent defendant.

I have here the Third Revised Ration Order which is a document comprising, if I can find the end of it, 32 pages

of offenses, regulations and rules. That is only one of the ration orders involved in this case. [596]

And when counsel gets up and makes his argument, at least by inference, that the man has done something wrong, that is not the question here. That is not the question, whether he did something wrong or immoral or unethical.

You are here to determine whether or not he violated two specific sections.

Perhaps the evidence might show that he violated 5,000 sections. But that is not your problem.

You are here to determine: Did he violate the specific sections which are set forth in that information?

And please don't, by any stretch of your imagination, become confused on that proposition because I am sure if you were on trial, you would want to be tried on the specific charge. If you were accused of shooting a horse, you would not want to be convicted of drunk driving.

So I am going to take this information and I am going to try to break it down to the best of my ability so that you will know what the specific charge is. I am not going to go on the theory that if you find that he did something in violation of one of these rules or regulations, then you should find him guilty.

My heavens! I don't think there is a human being alive, including myself, that has not violated some of these rules and regulations in some way. I perhaps have violated a thousand of them; I don't know. [597]

The question is one of intent and, "What section am I charged with"?

Let us take this information and see what it charges. Count One represents, in effect—although it covers dif-

ferent transactions—an aquation such as in Counts Three, Five and Seven. In other words, the allegations are the same except for the amount of the check or the amount of the sugar. So if I deal with Count One, I am really, in effect, dealing with Counts One, Three, Five and Seven.

When we analyze that Count One we have analyzed those four counts.

Here is what it says at the top of the page, giving the section number of Third Revised Ration Order. Here it is right in front of us:

“3d Revised Ration Order No. 3, Section 15.7 (d).”

Now, let us read that and see what it says. This is the charge on Count One with the facts set out afterwards.

Section 15.7 (d) reads very simply as follows:

“Overdrafts prohibited. No check may be issued for an amount larger than the balance in the account on which it is drawn less the amount of outstanding checks drawn on that account.”

Simply stated, it is the same thing as if I wrote a check on the bank for \$50.00 and I only had \$25.00 in there; and the check being drawn on that account, that would be an overdraft. [598]

Let us see what it charges.

First “. . . (the defendant) willfully and unlawfully performed acts prohibited by Section 15.7 (d) of Third Revised Ration Order No. 3, in that said defendants did willfully and unlawfully issue and cause to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn. . . .”

“On which it was drawn”: keep that in mind.

“ . . . less the amount of outstanding checks drawn on that account, by issuing and causing to be issued to the Union Sugar Company a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler in the amount of six hundred thousand (600,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles. . . .”

A particular bank, a particular account!

“ . . . when the West Coast Supply Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check.”

In other words, here are the elements: you have got to prove the defendant willfully—that is one thing—and deliberately intended to violate that particular law; that he had it in mind to violate it; that he actually issued a ration check. And a ration check is a check, under this order, that is drawn on a ration account. [599]

Now, in discussing this I recall what Mr. Strong had to say. One moment he has to say this:

“Well, at least impliedly the names were on the checks.

“ ‘West Coast Supply Co.’ was on there.”

In the next breath he tells you:

“He deliberately left them off of the checks because that was the plan to get sugar.”

Now, which side of the dilemma is he going to take? As a matter of fact, I think there is some basic lack of cricket in this case as far as the Government is concerned, if you want to get it that way. Let's analyze it.

Counsel calls to the witness stand witnesses to testify under oath on behalf of the Government, witnesses who get up on the stand and testify.

First Barry says, "The check is in the same condition as it was when I received it." •

But low and behold! After a little questioning, first Mr. Barry could not remember about that name "West Coast Supply Co." being on there; but he finally remembered it. And then he remembered it so quickly that it was like unlocking a box and the whole thing just shot out like a rubber ball or something which had been squeezed into a box.

The Government comes into court at the outset of this case amending its information. It read originally:

"A sugar ration check drawn by said West Coast Supply [600] Company. . . ."

But now it reads by amendment:

". . . check drawn by and on behalf of said West Coast Supply Company and Paul J. Ziegler. . . ."

Do you mean to tell me that counsel never had a suspicion that those documents had been altered? Why the amendment? Why does he come into court and change it?

There is a simple problem here to be solved, and that is whether or not this man is guilty of an offense. We are not here to test out who can win or lose a case.

Another thing in the realm of cricket I might point out to you: He strains at the mountain to bring forth a gnat to prove that this man is a partner of West Coast Supply Company—by what method? By once or twice a statement supposedly made. But he has in his own possession documents, original registration certificates, which he does not offer in evidence which show who the partners of West Coast Supply Company were. I had to offer that in evidence.

I want to show you those because right on these exhibits, which I had to get from the Government right here in court, they had the original registration certificates showing who the partners were.

But now counsel has changed his tune. He started out on the theory that he was going to prove that the West Coast Supply Company received the sugar; and because the defendant gets up [601] on the witness stand and honestly tries to tell the truth, now he changes his tune and says, "No, Ziegler Company got the sugar."

Well, he had this group of investigators. My heavens! They came here by squads. They had four down there the day that Paul Ziegler, a lawyer, by the way, went down to the OPA.

Now, if this isn't the most ridiculous thing that I ever heard of, Mr. Loud gets up on the stand and says that a lawyer, in his right mind, who has been practicing at the bar, makes a special trip down to the OPA in February of 1946 and in the presence of four investigators tells them, "I am down here to tell you I am going to get sugar, and you are not going to stop me."

Now, isn't that the most ridiculous thing you ever heard of? Why, a common ordinary school kid would have sense enough, if he were going to go out and cheat the law, not to go down to the FBI and call out the special agent in charge and say, "You had better watch me from now on. I am going to start to violate the law."

If that makes sense, maybe I should go back to school and start over again because I can certainly imagine one Charles Carr being caught at the OPA with four agents telling them, "Watch out from now on. I am going to start to violate the law."

That's really something for the books.

The gentleman who was a police officer back there on the [602] jury, I doubt if in all his career he ever had any such thing as that happen that the burglar came in and said, "Watch me. I am going to rob the bank next week."

Just take a look at Defendant's Exhibits A and B. They reposed in their possession here as quietly as anything could repose. Right on the face of it says: "West Coast Supply Co. Wholesale Department, 1654 Long Beach Avenue, Los Angeles—Los Angeles—Calif. . . . J. H. Ziegler, Allen Ziegler & Raymond Ziegler, partnership." That is one of them. Here is the other one: "West Coast Supply Co. . . ."

Now, he had those in his possession. Yet by the flimsy little tissue he tries to establish first that Paul Ziegler is a member of the West Coast Supply Company by the statement that some anthrax department of food and health inspector went down to find out something, to get a delivery receipt or a check signed, or something. And he says, "Somebody down there told me. . . ."

At least he thinks they did.

". . . Paul Ziegler was a partner of the West Coast Supply Company."

And then down goes the A.T.U!

It is a good thing it was not in war time. They might have had the army down there. And about all they can find out is that somebody said, "Paul Ziegler is a member of the West Coast Supply Company."

The Case progresses, and counsel suddenly starts to learn [603] the fact that he should have known long ago in the case, and then he changes his tune. He says, "Oh, oh! If Paul Ziegler isn't a member of the West Coast

Supply—of course, we have proved up to now that the West Coast Supply bought the sugar, and since the defendant went on the stand and proved that he really got it, why, we will change our tune and say he is guilty of getting the sugar and we will forget all about these other facts.”

So go back to the information, please, ladies and gentlemen. Don't do me any favors; don't do anybody any favors. Just do the just and proper thing and see that the charge is proved as made in this information. I don't care whether you like my looks or whether you like the defendant's looks or whether you even speak to me and meet me on the street. That has got nothing to do with it.

I am not here to try to twist your intellect, but I am here to try to stimulate your intellect so that you use the ordinary common sense and decency, justice and common sense which I know you certainly have.

Now, on Count Two it is charged—and that is the same as Counts Four, Six and Eight, except the amounts of sugar are different—it charges and at the top of the information we find “General Ration Order No. 8, Section 2.9,” “2.8” being stricken out and “2.9” left in.

Incidentally, that is a pretty good indication of how [604] doubtful the Government is about these criminal things. Apparently they did not know themselves of what he was guilty. They put something down and had it marked out. But I suppose the time is coming in this day and age when the Sermon at the Mount will not be sufficient to regulate our conduct. At least, the man who is going to obey the law, if he is going to be convicted without its being willful, is going to have to sit up into

the long wee hours of the night and burn out a lot of spectacles to keep up with things.

I will tell you very frankly, I am supposed to be a lawyer. I have been practicing just about 21 years. I graduated from two mighty good universities; and since I got to work on this thing I don't even know what a violation is half the time. Yet when a man goes down in broad daylight, he has got a legitimate business enterprise and he is not in any black market; the evidence shows he is running a legitimate business enterprise and he goes out in a business way in broad open daylight trying to get sugar.

Now, when counsel brought this out, you would have thought he was singing tenor when he hit that "1,300,000 pounds."

I don't care if it is one billion three hundred thousand. You are not here to convict on the amount of sugar. The question is if he got one pound or two pounds or two million pounds, that is immaterial if he got it illegally and in violation of the law, as charged. If he did not, he should be [605] acquitted. So let us not sing with glee upon the phrase "one million three hundred thousand pounds."

Here is a man in broad daylight, ladies and gentlemen, walking the streets, watching the OPA die in Washington. And I'll bet you that some of you people knew that that was happening in Washington.

You know, strange as it may seem, I knew that was going on myself. And the papers were carrying something about the fact that they were debating day by day what would happen to OPA in May and June of 1946. I even have a suspicion that a couple of people in this

country might have thought OPA was dead on June 30, 1946.

If I remember correctly, I think a few people started even to raise rent prices. Of course, I am not trying to confuse you now between rationing and the Emergency Price Control Act.

What I am trying to bring out is this: here is a lawyer who believes that OPA's power to ration is derived from the Emergency Price Control Act of 1942. I thought it, and I will defy anyone to produce me six great lawyers, and I will bet you that five out of six thought the same thing.

On June 29th the President vetoes the OPA extension bill. The country shouts its death. OPA is gone. The next day the President goes on the radio and explains why he vetoed the OPA bill.

Don't you think somebody might have suspected that that [606] meant the whole OPA program; that even a lawyer might be confused on that?

At any rate, we have the facts to show this: that up until that date Paul Ziegler had not bought a pound of sugar. He was sitting on the sidelines watching as any businessman would watch saying to these people, "If and when OPA dies I want to get some sugar."

What is foolish about that, a man in a legitimate enterprise who can't get sugar? I suppose he is supposed to close up his doors and kick his employees out and go home and put a sack over his head. But he did not do that. He walked the streets watching OPA draw its deathbed last breath. And OPA died, that is, the Emergency Price Control Act died.

Sunday, the 30th, the President promulgated Executive Order 9745, I believe the number is—and if I am not right I shall correct it later—and the following morning that was filed with the Federal Register in Washington which purported to continue the power of the OPA over rationing.

That was filed with the Federal Register in Washington, and I am sure all of you knew all about it on July 1st. I am sure you knew exactly what this order had in it. It was signed on July 1, 1946, "Harry S. Truman, The White House."

It was actually filed July 1, 1946, at 10:32 a.m. That is Washington time.

Here is a man out in Los Angeles a few thousand miles [607] away who has been watching OPA die, and he thinks, "Now is my chance to get sugar." So he leaps out of bed Monday morning, flies down town and buys some sugar. And he is supposed to know and have the willful intent to violate this document filed at 10:32 a.m. in Washington, D. C.

Well, that's one for the books. As a matter of fact, the evidence shows—and you will recall it—that Mr. Ziegler came to me to consult me about this document.

I think, if I remember correctly—and I am sure that the evidence shows—it was received in the office of the United States Attorney in Los Angeles on July the 9th and that sometime thereafter I acquired this from the United States Attorney. Then I read it, and we didn't know a whole lot more than we knew before we got it.

At any rate, all of the sugar had been delivered. If you will just remember back and reflect on the evidence. all of the sugar had been delivered on July 12, 1946.

Let's don't get off into any confusion about these deliveries from the warehouse to the plant. When I say "delivery" I mean that the sugar bought in this case had been paid for and delivered to the warehouse, the Overland Terminal Warehouse, by July 12, 1946.

That has a very significant bearing on this case because they have got to prove that he willfully, if they can prove anything, violated the law as set up in Count Two in receiving [608] the sugar.

Of course, what a lawyer is always up against is the question of whether to put the defendant on the stand. I could have sat quietly in this case and never put Paul Ziegler on the stand, and they probably would have convicted the West Coast Supply Company of receiving the sugar and might even have had that upset. But we did not do it.

Here is a document that came into the hands of the defendant sometime, the evidence would indicate, after the 12th, after the sugar had actually been received.

I submit, my friends, how can a man deliberately intend to willfully violate something like this file in Washington, 2,500 miles away, when in good faith he is out here purchasing sugar and has no knowledge whatsoever?

Should men be put in the gig for a thing of that kind? If Mr. Ziegler were intent upon violating the law, ask yourself this way: why didn't he buy it from these brokers in May or June?

You don't mean to tell me that those brokers would have been too touchingly reluctant to sell their sugar if he had signed a check then? There is another little aspect of this case you might give some thought to. You know, if you give me something, a pair of dice, and just

as you hand me the dice the police walk up, it is awfully natural for me to try to get rid of the dice. [609]

That is just what it looks like in this case. They got Mr. Barry. Mr. Barry may be a fine gentleman. I have no fight with him. But he comes up here and gets on the witness stand and says at first, "Why, no, that name was on there."

Of course, Mr. Barry knew that he could be prosecuted for an offense himself. But I suppose when you make a choice between who should be the defendant and the witness, you flip a coin. I don't know whether Mr. Strong flipped a coin or not, but if he did I am awfully sorry it landed on Paul Ziegler instead of on Barry.

As to Mr. Barry, naturally I don't know that I blame the man. He gets up on the stand and he says to himself, "What the devil! They have got all these regulations here, and I am taking a check. The West Coast name is not on there. So why should I stick my neck out?"

He was protecting himself. He wanted to sell the sugar.

You recall Mr. Ziegler said that either Leland or Barry said the warehouses were stocked up with sugar? Well, he was perfectly willing to sell it so long as he did not get in trouble himself.

When they come up here and tell you, anybody even starts to tell you, that they did not know about the West Coast Supply Company name not being on those checks, why, that is the most ridiculous thing in the world. Even the prosecution showed that the first day when they amended the information. [610]

You know, a person, I suppose—a lawyer and everyone else—rambles a lot in these things. Your mind gets

ahead of your thinking sometimes and you get to talking. It is like talking over a cup of tea. You sort of get off on tangents.

I want to get back again on the main track for a moment of the word "willful."

Aside from that most astounding statement of Mr. Loud that a full grown lawyer supposedly with his senses about him, comes down and holds up a red lantern and says, "Watch me from here on. I am going to violate the law."

Other than that statement, I submit on the question of intent Mr. Strong stands upon this proposition and only on this proposition. It is kind of a trick argument. You have to sort of tear it down and break it to pieces, or it will throw you.

Well, he says, "He signed checks, didn't he? If he knew there was no OPA program, why did he sign the checks?"

Let us see why. This telegram purports to come from someone who said the Commodity Credit Association says that the OPA rationing shall continue, and so forth and so on. Well, I did not know the Commodity Credit outfit was running the show. I guess a telegram from them to someone to someone else might possibly have made the average person think, "Well, maybe there might be something to the thing." I don't know.

Here is a lawyer who thinks he knows a little something. [611] He has been working in this. He has not bought any sugar in May and June. He is assuming that the OPA is running during those two months. So he comes along and on July the 1st he says, "All right. Now I want to get the sugar." So—I forget whether it was

Barry who brought the telegram—not Barry but the other fellow. What is his name?

Mr. Strong: Leland.

Mr. Carr: Leland, the man who brought the telegram. Let us analyze that telegram. Let's see what is in it.

"Pending further action by Congress on price control request that all processors, refiners and importers continue selling at prices in effect June 30. . . ."

Well, that is nothing but a request.

"Commodity commitments under outstanding contracts and programs will furnish basis for continuing operations until further situation is clarified. . . ."

Well, somebody else is not fully clear on the situation.

"Congress has authorized commodity credit to continue its 1946 sugar program and has shown willingness authorize 1947 sugar program. . . ."

We are even up in 1947 now.

"Will appreciate reply by telegram as to your policy. In view (of) extension Second War Powers Act rationing and allocating sugar and molasses continue in effect unchanged." [612]

Well, if it continued unchanged, then why did the President feel it necessary to get out and sign this executive order? He did not need it. So the President was just wasting his time?

Either this fellow is wrong or the President is wrong. Somebody is wrong. There was some confusion about this proposition because if it continued just as it was, then why did President Truman have to turn out Executive Order 9745 in which he says:

"The Office of Price Administration and the Price Administrator are directed to continue to exercise and perform all those functions, powers, and duties vested in them under or pursuant to the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended, which do not terminate by reason of the termination of those Acts on June 30, 1946, and all functions, and duties delegated to them under or pursuant to Title III of the Second War Powers Act, as amended. . . ."

Well, if this telegram is right, then this is wrong. So the President and the Attorney General of the United States, who advises the President, must have thought that they had to have an Executive Order to continue the rationing program.

Now, Mr. Ziegler's mind was simply this: "OPA is dead. It is Sunday. I can't do anything today, but Monday morning [613] bright and early I am going out and buy some sugar."

And he went out and bought it in broad open daylight just as anybody would buy anything. If he were going to violate a law and pull a lot of tricks, don't you think he would have had cash and gone down and bought the sugar for cash? Yet he draws checks on a bank account, nothing hidden about it.

Therefore, this case is simple.

To go back to the checks, why did he sign the checks? He goes down to the brokers and one of them says, "Look, they tell me that the Second War Powers Act, according to this telegram, is continued. There is still a rationing program."

Ziegler says, "Well, OPA died. How can there be a rationing program on sugar?"

"Well, we don't know, but we have this telegram."

So Ziegler says, "Well, I want sugar."

He sits down and writes what is not a ration check. It is nothing in the world but a plain check. The name "West Coast Supply Co." was not on there. He wrote out the check "Paul J. Ziegler," and he gave it to them. In other words, if he could not get the sugar from them, he, thinking the OPA was dead, why should he not get it that way? What is wrong with that?

If I were in business and a man came to me and said, "You owe me \$50.00. I am going to break your neck if you don't pay me." [614]

I say, "Bub, I don't think I owe you \$50.00." And he says, "Well, you are either going to pay me or fight."

I don't want to fight. I say, "I have a check here. I will give it to you."

He says, "Okay." There is no fight. I give him the check on a dead account, a dead bank, defunct and out of existence.

That is what Mr. Ziegler did, and he did not think the OPA was in existence. The name "West Coast Supply Co." was not on the check, and he signed the check and gave it to them.

You are not here to try the ethical situation. If you do, you violate your oath.

Mr. Ziegler is not here on a charge of ethics. He is here on a charge which says that they were overdrafts on the West Coast Supply Company account, and they weren't drawn on that account.

Your Honor, I notice I have spent about 30 minutes of my time. How long did you want to go? You mentioned a quarter of five.

The Court: You just regulate it, Mr. Carr, any way you find it convenient because you have a total of an hour and a half.

Mr. Carr: I don't know how the jury feels. I don't want to lose the patience of the jury, your Honor.

It is getting late, and if I am losing their patience, I [615] want to quit and continue in the morning. May I suggest that we had perhaps better defer the argument until the morning? However, I shall abide by your Honor's suggestion.

The Court: That will be satisfactory.

Ladies and gentlemen of the jury, you will remember the admonition I have heretofore given you. You will not discuss this matter among yourselves or permit anyone to discuss it in your presence. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court.

We will *not* take a recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p.m. a recess was taken until 10:00 o'clock a.m., February 11, 1947.) [616]

Los Angeles, California, Tuesday, February 11, 1947
10:00 A. M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor.

(Brief interruption for other court matters.)

The Court: The next case?

The Clerk: No. 19,106 criminal, United States v. Paul J. Ziegler for further jury trial.

Mr. Strong: Ready for the Government.

Mr. Carr: Ready for the defendant.

The Court: Stipulate the jury are present, gentlemen?

Mr. Strong: So stipulate.

Mr. Carr: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: You may proceed with your argument.

Mr. Carr: I believe I have an hour, Mr. Cross?

The Court: Mr. Cross?

The Clerk: Yes, your Honor. You have an hour and 27 minutes, Mr. Carr.

Mr. Carr: I think you are mistaken.

The Clerk: You consumed 33 minutes; so you would have—

Mr. Carr: You are thinking of Mr. Strong, I think.

The Court: Yes. [618]

Mr. Strong: I don't have that much either, your Honor.

The Court: I have a note that you have an hour left, Mr. Carr. From 4:15 to 4:50; you have consumed 35 minutes, according to my record.

Mr. Carr: I have an hour left?

The Court: Yes.

Mr. Carr: That is what I understood, your Honor.

The Court: Yes.

ARGUMENT ON BEHALF OF DEFENDANT

(Continued)

Mr. Carr: May it please the court, ladies and gentlemen of the jury, I probably feel this morning like a Ford that has been frozen up. The oil is a little bit hard, and it will be pretty difficult to get under way.

You know, it seems that it is the life of a lawyer whenever he gets into trial that every client he ever had has to have everything done at that time. And, of course, it is human nature that they feel that they should come first. So I come before you this morning slightly weak and weary.

Maybe I will generate a certain amount of steam as I go along. I suppose we have got it in us. The human race, as we get up and pitch into our task, we forget about our weariness and begin to really work.

Yesterday I was trying, among other things, to break down the specific charges and trying to impress you with the [619] fact that you were hereto try this defendant on specific charges, not some general charges.

In that connection, and before I take up again the specific charge, I want to impress upon you the necessity under our jury system of the individual judgment of each juror. Each and every one of you ladies and gentlemen is an individual with your own processes of thinking and your own stamina, your own character.

It may well be that you disagree on the interpretation of the facts, and I want to admonish you that you are supposed to stand on your position.

If you are firmly convinced of your position, I think the court will so instruct you, you should stand to that

position and not be guided in your deliberations by a desire to be with the majority. In other words, it is perfectly possible that in your deliberations you may arrive at a verdict of guilty by 12, or you may arrive at a verdict of not guilty by 12; or three of you may disagree. Of course, I think the court will instruct you that you should listen to your fellow jurors, not have a closed mind, but should have a mind resilient to the other jurors' reasoning.

If, after listening to that reasoning, you are still of an abiding conviction, you ought to show it by your verdict. In other words, do not give in to any majority idea.

Coming back to the information and referring for the moment [620] to Count One, which is representative, as I told you yesterday, of Counts Three, Five and Seven, with different checks, but the allegations being similar, you will recall that we dealt with the subject of willfulness; that there must be proof of willfulness.

A mistake in judgment, a mistake in interpretation of the law, a man should not be punished for that.

Now, the test is not whether you, under the circumstances, would have come to a different conclusion. The question is whether or not this particular defendant at the time he did these acts as charged he actually had in his mind he was completing a transaction that was not in violation of the law, the specific charge.

The next thing was the allegation that he issued a sugar ration check.

Respecting the sugar ration check, I am sure the court will instruct you that a sugar ration check is defined by the very ration order under which this charge is laid.

Paragraph 5 says: “ ‘Check’ means a sugar ration check in the form prescribed by the Office of Price Administration drawn by a depositor”

I repeat that: “. . . drawn by a depositor” and continuing:

“. . . against his account”

I repeat that: “his account.” [621]

“. . . and made payable to the account of a named person”

So one of the questions under the instructions of the court you are going to have to determine is whether or not this was a check in Counts One, Three, Five and Seven. Was this a check drawn on an account by a depositor on his account?

I submit that the evidence is pretty conclusive that the account was in the name of the West Coast Supply Company; that in order to be a check drawn on his account, it would have to be on the account of Paul J. Ziegler.

It is my argument and my contention that this was not a check drawn on the account of Paul J. Ziegler, and he was not a depositor.

The next allegation:

“. . . for an amount larger than the balance in the account on which it was drawn”

Now, keep in mind, ladies and gentlemen, you have a specific charge; and this is the charge by which you must be guided in determining whether the proof has established a case.

Now, it says:

“. . . for an amount larger than the balance in the account on which it was drawn”

Can any of you ladies and gentlemen say that when you write a check for a milk bill on an account in the Bank of America and it is on your own account that you are drafting the check [622] or drawing the check for an amount larger than the account if the account is in some other bank?

Here it says:

“ . . . larger than the balance in the account on which it was drawn . . . ”

Well, on what account was it drawn? It certainly was not drawn on the West Coast Supply account. That name was put in on those checks after those checks were issued. So the proof falls down again in regard to the specific allegations of Counts One, Three, Five and Seven.

The next allegation is:

“ . . . that less than the amount of outstanding checks drawn on that account . . . ”

We are now again talking about that account. As a matter of fact, it seems to me that it is just common sense that when Mr. Ziegler signed these checks he was in this position:

He says, “I don’t think OPA was in existence.” The broker said, “Well, we want checks.”

Now, suppose it had been meat rationing? Suppose the broker had said, “No, I can’t sell you meat.” And Mr. Ziegler knew that meat rationing had gone out and he said, “All right, if you insist. I think I am entitled to meat. I am going to sign this piece of paper and give it to you.”

What has he done? He has not drawn a check to get meat. He has merely complied with the whim of some-

one who is selling [623] the meat because meat rationing is entirely out of the fact.

The next allegation is:

“ . . . by issuing and causing to be issued to Union Sugar Company . . . a sugar ration check . . . ”

Well, I don't need to repeat my observations respecting a sugar ration check because a check is drawn by a depositor on his account. And this was certainly not—and the evidence does not show—on his account.

“ . . . was drawn by and on behalf of West Coast Supply Company and Paul J. Ziegler . . . ”

Now, “and on behalf of the West Coast Supply”: yet the evidence, to me, is conclusive that West Coast Supply Company was not on the check when it was issued, not on any one of those four checks.

How could it be drawn by and on behalf of the West Coast Supply Company?

It goes on to say:

“ . . . on the Union Bank and Trust Company . . . ” when West Coast had a balance in its account at said bank in an amount insufficient to cover the amount of the check.

This whole information shows that the Government started out to prove that this check was actually issued on the West Coast Supply Company account. It was under that specific section, 15.7 (d), which is labeled right at the top of the [624] count, which says:

“No check may be issued for an amount larger than the balance in the account on which it is drawn . . . ”

The Government started out here to prove that this was actually the check as it stood at the time; that “West

Coast Supply Co.” was on those checks and that this check was actually drawn on the West Coast Supply account.

It developed that that is not the case. I contend that the allegations of this information are thrown completely out of line with the proof. But you are to consider—and that is your prerogative and duty—whether or not the material allegations, as they are laid in this information, have been proved, not to speculate on whether or not these checks might violate some other of the many rules and regulations of this order or some other OPA order.

I submit that is just common sense because if a defendant, as I said yesterday, is to be brought into court charged with having hunted in violation of the law, shot doves and you prove when he gets on trial that he was guilty of drunk driving, we certainly would have chaos in our system of justice.

A defendant is entitled to come into court and meet the specific charges. We have met these charges as it developed that the Government is at least mistaken about these checks. In fact, from all of the evidence in this case I think it is conclusively shown that they were altered. The reason for the [625] alteration is not necessarily material, but the fact that they were altered brings into play this simple proposition that these checks were not issued by a depositor on his account and, in fact, they are nothing but pieces of paper just the same as if I gave you a check today for meat.

Insofar as intent is concerned, in this connection in this count I want to call your attention to Exhibit G,

Defendant's Exhibit G. This, you will recall, is the check from the OPA for 66,963 pounds of sugar, and it is dated June 28, 1946.

That was on a Friday, and I assume this check arrived sometime in the mail of the West Coast Supply Company on Monday or Tuesday or sometime after Sunday.

The reason this check is in evidence is very simple. Mr. Ziegler, or at least the West Coast Supply Company, had a certain balance in its account; and they also received this additional amount of sugar under the rationing program. The fact that the West Coast Supply Company did not deposit this check, to me, is very significant. Apparently someone must have thought that the check was just a piece of paper; that there was no rationing program on sugar still in effect and why make the deposit?

Here it is still here today. There was no deposit made. It seems to me that is simple reasoning.

Now, I want to take up Count Two. Before I do that I want to refer you to this, and I think the court will deal with [626] it—and, of course, you must take the law from his own Honor—the province of the jury being to determine facts. The province of the court, under our system, is to give you the law. You apply that law to the facts and reach your conclusion. You must be bound by the law as given you by the court. There is no question about that.

Now, the word "Issue": I left that word to come back to this information, Count One, again. It is said that this defendant issued a check.

I have submitted to you that proposition that there is in evidence that it was a ration check. The next thing is

paragraph (15) of Section 24.1 which defines the word "Issue," and I think it is very significant.

"'Issue' when used with respect to a check, means the delivery of a completed check"

I repeat that:

". . . the delivery of a completed check to the person to whose account the check is made payable."

I submit to you that that allegation is not sustained; that the check was not a completed check when it was delivered. Therefore, it was not a check issued within the meaning of the law.

Now, please, let's don't arrive at the conclusion that I am being technical. Let us keep in mind that the specific charge is the charge that you must decide and not go off into [627] the field of speculation about other charges.

It may well be that this particular act or acts might be a violation of a hundred other sections of this order; but that is not your province. The Government has picked and chosen the particular charge on which it will stand, and it is up to the Government to prove beyond a reasonable doubt every material part of that charge. If the Government does not do it, your duty is to acquit this defendant.

Respecting other definitions, I think the court will instruct you that the OPA order provides what an "account" is, and that is, referring to Section 24.1, paragraph (1):

"'Account' means a sugar ration bank account carried by a bank, in which the bank keeps a record of deposits of stamps, coupons, and checks"

"'Depositor' means a person who has a ration bank account"

I submit to you that the evidence in this case is not or does not by the slightest prove that Paul J. Ziegler was a depositor or that he had a ration account. The best way I can focus the whole problem on Counts One, Three, Five and Seven is to use an analogy with checks.

If I sign a check "Charles Carr" and I have no account at the bank, I may be charged with issuing a worthless check. But if I am charged with overdrawing an account on the West Coast Supply Company and I never wrote "West Coast Supply [628] Company" on that check and the Government proceeds on the theory that they will prove that it is an overdraft and the facts develop that the check was issued by me on no particular account, it is merely a worthless check and the charge has not been proved, to-wit, that it was an overdraft.

Those are two separate violations. Under State Law you might be charged with issuing a worthless check, or you might be charged with an overdraft on a particular account. So that is a distinction I am continually trying to impress upon your minds: the specific charge—the specific charge—the specific charge, not some general proposition that he may have violated some rule or regulation.

Respecting Count Two, it is representative of Counts Four, Six and Eight in this: The allegations respecting the amount of sugar are different, but the allegations otherwise are the same. And, mind you—and keep this in mind—the Government picked its crime here.

The Court: Not a crime, a misdemeanor.

Mr. Carr: Very well, your Honor. That is, I believe, still a crime.

The Court: All right.

Mr. Carr: Remember yesterday I said to you that there might have been some doubt in somebody's mind. The Second Count starts out: "U. S. C., Title 50, Appendix, Sec. 633, et seq.; General Ration Order No. 8, . . . 2.9." [629]

So I suppose you know to get those equivocal situations in your mind they thought, "Now, let's see. Which way do we go here? Well, at any rate, Section 2.9 is the charge."

So we are here in court on a specific charge of violating, not this ration order but another ration order now. That is Ration Order No. 8.

Let us see what that specific charge is. Now, mind you, I am going into Counts Two, Four, Six and Eight so that these arguments relate to all of those counts.

It says:

"From on or about July 3, 1946, to on or about August 17, 1946 . . . defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, willfully and unlawfully performed an act provided by Section . . ."

And I notice 2.8 scratched out again, and 2.9 is left in.

". . . of General Ration Order No. 8, in that said defendants did willfully and unlawfully receive a rationed commodity . . . 380,000 pounds of sugar . . ."

Well, on the subject of a rationed commodity, I assume the court is going to instruct you that rationing was still in effect at that particular time. Our position has been to the reverse. We have contended differently here, but we have to submit to his Honor's ruling in that regard.

“ . . . from the Union Sugar Company, in exchange for a [630] ration document, to-wit, a sugar ration check . . . ”

You have to find beyond a reasonable doubt from the evidence, from this specific charge, that the sugar was received in exchange for a ration check.

Later on it has to do with invalidity. I will take that up in a moment.

Now, I have submitted the argument about what a check is; that it was not drawn by the West Coast Supply Company at all and that the proof does not show it was a ration check.

“ . . . drawn by and on behalf of the . . . West Coast Supply Company and Paul J. Ziegler . . . ”

I have submitted the argument, that same argument, I gave you on Count One, applying to this series of counts that it was not a check drawn by or on behalf of the West Coast Supply Company. It was nothing but a piece of paper.

Back to the meat proposition again, he did not believe rationing was in; so here is a piece of paper. It goes to the question of intent; but at least the charge is not sustained.

It goes on:

“ . . . in the amount of . . . 600,000 pounds of sugar, on the Union Bank . . . dated July 1, 1946, and issued by the defendants . . . ”

I have made my argument to you respecting the word “issue,” that is, as to the completed check. In other words, I submit [631] the evidence does not show it was a completed check.

“ . . . when . . . defendants knew and had reason to believe that the said ration document . . .” meaning the check—

“ . . . was not validly issued”

It was not a question of validity at all. I submit the evidence shows it was nothing but a piece of paper.

If the Government had wanted to charge this defendant with having received sugar without having turned over a ration document, that is another charge; and that is not the charge in this case. That is the trick of this thing that you are going to have to watch because I have debated this thing with myself over and over again, and I find I even get into confusion. I get to thinking, “Well, now, here there has been some proof about receiving sugar.”

The section here is 2.9 in connection with the issuance of a ration check. This is the section that provides that it is unlawful, for example, for a person to receive sugar without giving up ration evidences. But that is not the charge in Counts Two, Four, Six and Eight. And you will have to watch that, or you will be led into confusion and you will come to the conclusion, “Well, he received the sugar. He didn’t give up a ration certificate.”

If you intend to find him guilty, only if he violated the law will you find him guilty. But that is not the charge at [632] all.

So I beg of you to be very careful in analyzing the proof with relations to the allegations in those counts.

Then it goes on to say:

“ . . . because the said West Coast Supply Company did not have a sugar ration bank account in said

bank with a balance therein sufficient to cover the amount of said check."

That is a material allegation, I take it, of this information. Can you find this defendant guilty on this charge? From this evidence can you say that that allegation has been proved because "said West Coast Supply Company did not have a sugar ration bank account in said bank with a balance therein sufficient to cover the amount of said check?"

I submit the proof is that it was not drawn on the West Coast Supply Company account at all.

If the world were made up of theories such as advanced by counsel in the early part of this case, that all you have to do is form a partnership and have your partner go out and shoot someone or commit a crime and that you are going to be responsible because that partner heretofore has been acting for and on behalf of the partnership, you would not dare have a partnership.

Furthermore, there is a wide distinction, ladies and gentlemen, in business, as you all know, between being a partner of a concern and being authorized to sign a check. [633]

Let us assume, for the purpose of argument, that in accordance with Government's Exhibit 2, I believe it is, that signature card, that Mr. Paul Ziegler was authorized to sign a ration check but the signature card required that it have "West Coast Supply Company" on it.

As a matter of fact, you will recall that the proof showed that they had three accounts: Wholesale, Industrial and Processing. And on those checks, in addition to the name "West Coast Supply Co." appeared "Industrial" or "Wholesale."

So you don't even have a distinction as to which of the three accounts the check was even purported to have been drawn on. If you had the West Coast Supply Company name on there, you wouldn't have that. But a person who is authorized to sign your name is not authorized to go out and commit a crime, and by merely putting your name on that document make himself liable or you liable, insofar as issuing the check is concerned, because first of all the charge is that it was a ration check; it was issued on the account of the West Coast Supply Company.

I submit to you that you are going to have to be very careful about especially Counts Two, Four, Six and Eight because you may get off on the proposition, "Well, if he received the sugar and he didn't give up ration evidence, he is guilty."

Well, that is not the charge. And I keep repeating that: That is not the charge. You should make the proof fit and support the allegations of these counts. Otherwise, he is [634] entitled to an acquittal.

I have tried, in the best way I can, to break that down. It is to some extent legalistic. But I think I have made myself plain as to the specific charge.

Are the material allegations supported by the evidence in this case? And I submit to you that they are at complete variance with the proof—at complete variance.

Now I want to come back a moment to this question of intent, I dealt with it somewhat yesterday, but first I want to take up the matter of shipments. I don't think counsel for the Government will contend that whoever had received the sugar, be it the John H. Ziegler Company or the West Coast Supply Company—I don't

think counsel will contend that that sugar was received after July 12th. There are some documents here which purport to show the transfer of the sugar from the Overland Terminal Warehouse to the West Coast Supply Company. But on those dates the sugar had been paid for, had been delivered to the warehouse to the account of the West Coast Supply Company.

So I submit on the question of intent, which involves this document, involves this Executive Order 9745, that even if you find that the defendant Ziegler received that sugar, the sugar having been delivered on July 12th, that the evidence clearly supports the proposition at that time that Ziegler could well have intended not to violate this law because he [635] did not know anything about it.

Just let me recap the situation on this just for a moment.

Ziegler, the evidence shows, was looking for sugar in May and June when the OPA was supposedly being debated in Congress. He had told these brokers that he thought sugar rationing might die and if so he wanted to be in a position to get sugar so he could maintain his business.

He did not buy any sugar during that period. He waited until OPA, that is, the Price Control Act, actually died.

On a Monday morning, after the President made the speech in which he pointed out why he had to veto the extension of the Emergency Price Control Act, the very following morning bright and early Mr. Ziegler went out, got busy, called up the same brokers to get the sugar.

I submit to you in passing that that shows a definite intention not to violate the law, but he thought that he

had waited until rationing had gone out; that he intended to go out and do business as any businessman would do and that is go out in the market and get sugar to maintain his business. You will recall that the testimony was that his company was unable to get sugar.

That is very simply understood because under this ration order everybody is put up on an historical basis. If you did not get sugar at a certain time, after that time you were out [636] of luck.

This executive order was filed in Washington at 10:32 a.m. Monday morning. That is 7:32 a.m. out here. Let us have no quibbling about that. So it was filed with the Federal Register. It was published in this first issue of July 2, 1946, after these checks had been written.

The evidence shows this reached the United States Attorney's office on July 9th, and the evidence shows that sometime after that time I acquired this copy.

Here is a ration order. You have got to keep the historical background in mind. The Second War Powers Act was also dying, but the Congress extended that on Saturday, June 29th, and the President signed that bill.

But on the Price Control bill, he did not sign that.

It is very reasonable for a lawyer to believe, or anyone, for that matter, that if OPA is gone, these delegated powers under the Second War Powers Act which had gone into the OPA were no longer in the OPA because OPA was dead.

The President must have thought that, ladies and gentlemen, or else why this executive order?

Here is an executive order which says, mind you, in light of the fact that the bill has now been vetoed extending the OPA:

“The Office of Price Administration and the Price Administrator are directed to continue to exercise and [637] perform all those functions, powers, and duties vested in them under or pursuant to the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended, which do not terminate by reason of the termination of those Acts on June 30, 1946”

And what else does he say to OPA?

“. . . and all functions, powers, and duties delegated to them under or pursuant to Title III of the Second War Powers Act”

in other words, the President felt that OPA had no powers at that particular time. First of all, the Second War Powers Act has just been extended. OPA died. This delegation of power must be re-delegated to the OPA so that they may be in existence to carry out these many rules and regulations.

This was filed in Washington early that morning, and Ziegler that same morning is out here trying to get sugar.

I submit to you that you are being asked to convict a person who is in a legitimate business, who has watched for two or three months the sugar market waiting for an opportunity to buy upon the assumption that OPA was dying. And as soon as he thought it died, he went out and bought.

Well, just one more reference back, then, to the telegram. The Government seems to contend that because

the telegram was brought to his attention, or at least the witness testified, after, I suppose, refreshing his recollection, that this telegram [638] was read to Mr. Ziegler—it says:

“In view of extension Second War Powers Act rationing and allocating sugar and molasses continue in effect unchanged.”

This is signed by James H. Marshall, director of the Commodity something.

Well, Mr. Marshall and the President seemed to disagree on the proposition. The telegram is dated July 1, 1947. At least the witness said that is the date that it is supposed to have been received. I don't know what time of day.

But I submit the telegram is wholly inconsistent and that Mr. Ziegler, as a lawyer, as an individual, had a perfect right to be of the same opinion that the President had, and that was there had to be an executive order of some kind setting up and re-delegating this power.

I want to ask you now, How was Mr. Ziegler to know that this order had been filed in Washington, D. C.? As a matter of fact, I doubt if Mr. Strong knew about it until he started to work on this trial. He may have in connection with some other case.

Keeping in mind the specific charge, the necessity for proving specific willful intent, I want to advert again just a moment to this shipment business. I don't think I made it quite clear. I was dealing with it with reference to receiving the sugar on the 12th. The last shipment of sugar was received then. The fact is that Mr. Ziegler at that time did not know [639] about this proposition.

Now, the shipments of the sugar from the warehouse: in other words, if you buy eggs and they are put in the warehouse, the mere fact that you move those eggs from the warehouse to your home does not mean that you did not have the eggs before they moved them from the warehouse. So the dates after July 12th, I submit, are not material to the question of intent. In other words, these transfers of sugar from the warehouse to the West Coast Supply Company.

Time seems to go by. So. Mr. Cross, will you advise me on the time, please, sir?

The Clerk: Yes. Your time is up at 11:05, Mr. Carr. You have 20 minutes.

Mr. Carr: Very well. Now, the question was brought up about the advice of counsel. Unfortunately you cannot convict me in this case anyway. Maybe I should be the one; I don't know. But I think his Honor will instruct you—and I am frank to admit we lawyers make a lot of mistakes; in fact, I don't know anyone who doesn't make a mistake now and then. If I meet a fellow who says he doesn't make a mistake, I want to get away from him fast.

Mr. Ziegler testified that he came to his counsel at that time—it happened to be me—and as I remember back he had every other name in town suggested to him by the OPA except mine. But I got in the case some way. He got some advice [640] from someone who purports to be a lawyer, to-wit, the man who is now standing in front of you.

With all due respect to his Honor, with all due respect to the Government and with all due respect to the Administration and everyone concerned, I will still

bank my judgment that there was not any rationing at the time.

His Honor is going to probably instruct you—I think he will—that there was rationing at the time. That was my judgment. It is still my judgment. And you have got to take a little bit of the sting off of Mr. Ziegler and put it on my shoulders. My shoulders are usually pretty broad.

I believe I said earlier they are not too broad this morning, but I think they are broad enough to stand that. And I think his Honor will instruct you that if in laying all the facts before his counsel, honestly relying upon the counsel's interpretation of the law, even though it is inaccurate, and believing it, that that is a defense to be considered by you ladies and gentlemen of this jury.

I submit that the facts in this case are such that he is entitled to that consideration.

I want to advert just a moment to the proposition of a type of business. I think I have already mentioned that, and I may be repeating myself. But in a cause of this kind I suppose some things will bear repeating. We are not dealing here with some underhand black market situation. We are dealing [641] with an established concern that is trying to operate a legitimate business. It was not even selling sugar. I believe the testimony showed there was not even a single sale of sugar at that concern but it was used in the manufacture of products which are sold throughout this area.

He was in need of about 47,000 pounds of sugar a day to actually carry on his manufacturing business. And when he was out trying to purchase sugar, after he believed that OPA went out of existence, he was doing just the normal thing a business person would do.

And the amount of sugar again: please let me ask you, Don't let the figure 1,300,000 pounds influence you in this case.

Respecting the alteration proposition, I have got to advert to that again. I said yesterday something about cricket. Well, I think you know what I mean by "cricket." It means that when you play a game of polo instead of swinging the club back maybe under certain circumstances you give the other fellow just a sporting chance. Maybe while the bird is sitting, instead of shooting you let him fly before you shoot.

Well, Mr. Ziegler has never left the ground in this case. They started out with the proposition that the Government is going to prove that these checks were issued on West Coast Supply Company. They had four investigators go up there when Mr. Ziegler is supposed to have made that brilliant [642] assertion that he was going to get sugar anyway he could way back in February, '46. They had four men, I think, at that time. The A.T.U., the Food and Drug, and everyone but the Navy went out to the West Coast Supply Company to try to get a statement of some kind, and they certainly had the opportunity to find out the fact, if they didn't find out, that these checks had been altered. Yet in a court of justice where the sole aim and purpose of the administration of justice is to ascertain the truth, if my client is guilty of a violation of the law and you so find, it would be your duty to convict him. But, on the other hand, he should be convicted upon the light of the truth. And yet a witness takes the stand and testifies on direct examination that those checks are in the same condition now. If the first witness did this, would that not put someone on notice it might have happened to

the other three? They put the second witness on. No attempt was made to get at the light of truth. I had to struggle and fight my brains out here to try to get at the facts to establish that these checks were altered.

All right, if Mr. Ziegler has violated some other law, let us get at the facts in that case and let us convict him on a specific charge, on the truthful specific charge. It might have been that if I had been incompetent—maybe I was in not getting more evidence out—I might have failed completely to bring out from those witnesses the fact that [643] these checks had been changed. But afterwards finally the situation develops, and it becomes quite obvious that there has been a change. Even two more witnesses take the stand and testify. Do you recall the fellow? I said, "Are you positive that that check was not changed?" And he answered, "Absolutely."

Yet the Government does not assume the burden to clarify that situation and find out the truth. We might have gone through this trial without the truth ever being developed, except what the defendant might have testified to. And after all you might disbelieve the defendant. This whole case might have gone to the jury on the proposition that these checks were actually issued on the West Coast Supply Company account. That is what I mean when I refer to "cricket."

Mr. Strong, I realize, is a lawyer. I am not maligning his character. I know Mr. Strong very well. I know his great traits; and maybe if he has any bad ones, I may know some of those. He probably knows the same about me. But Mr. Strong is like so many weak human beings. We go out to play tennis. We want to win. It just gets in the blood. We want to win. And we are blinded with our desire to win.

I submit to you that the light of day should always come out first by the Government on a situation of this kind.

May I have just one moment, your Honor?

(Brief pause in the proceedings.) [644]

Mr. Carr: Ladies and gentlemen, I have, in the best way I know how, tried to boil this case down to the crucial issues. I have tried to appeal to reason, and I am expecting you, as good American citizens, to base your judgment and your verdict on reasoning.

I admonish you again: the specific charge! And I want to leave these two thoughts with you.

Here is a misdemeanor or crime—call it what you will—which has been committed in broad daylight. Checks have been issued through the ordinary course of business. A concern needs sugar.

The evidence, I believe, shows that it was in desperate circumstances in May and June. Mr. Ziegler, had he wanted to violate the law that badly, it seems to me would have violated it in May and June. But he goes out in the open market. He does not hide anything. He issues checks in the ordinary course of business. The sugar is delivered in the ordinary course of business, and it is used in a legitimate enterprise. The concern needs, I believe he testified, 47,000 pounds of sugar a day.

Would you not think that a lawyer, if he really intended to violate the law and thought he was violating the law, would at least take the pains to cover up something? Would he just go right out in the open broad daylight and do all of these things? [645]

Well, I submit to you that the proof is inconsistent with the theory that he was actually out deliberately and willfully violating the OPA.

I request you again, in your consideration of this case, to resort to your individual judgment, keeping in mind that you sit—and these are not trite words—in a period of time after much *travail*, not only recent but in years past. Many of your forefathers gave up their lives to found the system where free men could be tried in a free way. Sometimes we forget those sacrifices, and in our casual every-day approach to life we get in a hurry; and we get wound up and wrought up over our own affairs and we forget a little bit about the other fellow.

But the sacred rights—and they are indeed sacred—which were founded in the blood of your forebearers gave you the privilege of sitting on that jury and me the privilege of addressing you and also the privilege that his Honor has of sitting there to instruct you in the law. That sacred privilege requires the utmost confidence, care and nurturing to be sustained by you, so that when you take this case—I am about to relieve myself of what responsibility I have in the matter at this time; and I have resorted to that responsibility the best I know how—but you are about to take over that sacred function of deciding what shall happen to one of your fellow men. No matter what his station or rank, creed or color, [646] a man in a court of justice in a democracy is entitled to the closest scrutiny and consideration of each and every one of you.

And when you go home—I will say this to you—and if you convict this defendant without an abiding conviction beyond a reasonable doubt, you yourself may recall if you were careless or inconsistent or did not give a thought because it will rest in your bosom, your conscience, What have I done? And is it in accordance with

those great principles that have been established on the blood of your forebears?

I am not trying to say this to wave the flag to you. But sometimes we, the American public I am afraid, develop the point of view that a trial is like a baseball game. It is the matching of wits of counsel. We have had so many trials in the movies where people leap up and make wild assertions and argue with the witness. I am afraid we have a tendency sometimes to get away from the sanctity of what you people must do in a case of this kind.

I say to you that this defendant is entitled to the same kind of judgment that you would expect from your own mother or your own father, from your own brother, from your own fellow citizens, just as much care and tenderness in deciding these issues, because if he is not guilty the system is set up to free him under a free system. And if he is guilty, he should be convicted only upon the specific charge under the evidence [647] proving every material allegation of that charge.

You look like good, straightforward American people to me; and I am at this time willing to submit it to you. I am not asking you to bring in any particular type of verdict.

I am just asking you to do this: require the Government to prove the specific charge; make them prove beyond a reasonable doubt the specific charge. If there is a material allegation that is left out, you should acquit. If they do not prove willful intent beyond a reasonable doubt, you should acquit. And you should not speculate upon any other issue, moral, ethical, or upon whether or not this defendant has violated some other law. So that you

may have that feeling that you have contributed in a small way to an, indeed, great system.

I say this to you very frankly from a great many years' experience from a relatively young man that the sanctity of democracy, its cornerstones, must rest upon justice in the courts. If we ever lose or fail in bringing justice in our courts of justice, I predict the beginning of the crumbling of a great democracy because here is where men and women and all may come for an unbiased, impartial decision of whether or not a particular person has violated a specific law.

So I leave it to you. I pass that responsibility which has been mine under this free system, and I now give it to you.

I say this in closing: If I have offended you in any [648] way, that is of no moment. If you don't like the texture of my skin, the color of my hair, that has not nothing to do with the case. Maybe you don't like my looks. That has got nothing to do with the case. Maybe one of you might not like Mr. Strong, although it doesn't seem possible because he is a very charming, affable, aggressive,—and I repeat aggressive—fellow.

Don't let the lawyers bamboozle you in any way. Don't let me, and I know Mr. Strong wouldn't. But just decide this case on your God-given right as a free American citizen to determine whether or not they have proven the specific charge.

I want to thank you for your courteous attention. I don't know whether you agree with me or whether you disagree with me. I have been practicing law a little over 20 years, and I am frank to say I can look you ladies

right in the face, and I am just one of those gentlemen who doesn't know what a lady thinks. As a matter of fact, I can look you men in the face, and I don't know what you are thinking.

A great many people tell me that you can read the mind of the other person, but I am frank to say that when I leave this platform I don't know what you are thinking. But I am indeed grateful that you have looked me in the eye, given me a straightforward hearing. That is what I am entitled to, and I have had it. My client has had it, for which I thank.

The Court: We will take our morning recess, ladies and [649] gentlemen. You will remember the admonition I have heretofore given you. You will not discuss the matter among yourselves or permit anyone to discuss it in your presence. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court.

We will now take our morning recess.

(Brief recess.)

The Court: Stipulate the jury are present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Mr. Strong, you may proceed.

CLOSING ARGUMENT ON BEHALF OF THE
GOVERNMENT

Mr. Strong: Thank you, your Honor. Ladies and gentlemen of the jury, I am tired, too. I guess we are all tired here. So I shall try to make as brief as I possibly can what I have to say.

There is one thing which Mr. Carr said with which I agree completely. That is the necessity of preserving these fundamental bases upon which the democracy in which we live is founded. There is no question about that. Nobody disagrees. [650] But there is one basis that has not been mentioned, and that is obedience to the laws of the United States.

How long, ladies and gentlemen, do you think this country can continue if people can disregard laws as they see fit? How long can they continue if people decide for themselves what laws to obey and what laws not to obey? That is one of the most fundamental bases for continuance of any system of Government including this one. And there isn't any question as to the law in this case.

His Honor will tell you what the law is. If there was not any rationing in effect at the time that we charge, you would not be here. There would not be any case here. But his Honor will go into that in a little more detail.

As you have noticed, I am the prosecutor in this case. I have a duty to perform. My duty is to bring in cases and to present them before a judge and a jury. You ladies and gentlemen are the ones who determine whether there is a violation or not. I have no personal interest in any of these cases, except insofar as is necessary for

me to perform my duty to the greatest and fullest possible extent.

If I seem aggressive or if I do anything else, it is only because of the necessity of performing my duty in the best way that I see fit. And my purpose is not to convict anyone or to persuade you in any way against the facts. My purpose is simply to present the facts to you, and you decide what the [651] facts show.

You know, in connection with these cases, that there are various agencies coming into play. You saw agents from the Office of Price Administration.

They have a function to perform that is separate from mine. And the A.T.U. people, they have a function to perform and I have nothing to do with the performance of their function. They have nothing to do with the performance of mine.

My job is to bring the evidence before you the best way I possibly can, and my job is to bring the evidence before you which is put before me in a form that I consider to be credible.

What better basis if there for me to present evidence to you than to put a man on the stand under oath? If he gives evidence under oath, I assume he is telling the truth. If on cross examination some other story is brought out, that is something else. I don't know what the truth is at that point. You will have to decide which of the stories to believe if they are in conflict. That is the function of the jury.

Now, these laws which we have in this country apply to everybody equally, including Mr. Ziegler.

Ladies and gentlemen, if upon examining all the evidence in this case you may decide that he did not violate

the law, by all means you should acquit him. There is no question about that. If you have any reasonable doubt about the facts which [652] his Honor will tell you about in giving you the instructions on the law, if you have any reasonable doubt you should acquit him. There isn't any question about that. His Honor will state the rules that you said you would follow, and I know you will follow; there is no question as to that, either. And in applying those rules, if you decide that the defendant was not guilty as charged, acquit him. Acquit him. But if, on the other hand, you feel that he is guilty as charged, it is equally your duty to convict.

I merely bring these different situations before you to emphasize, to dramatize the fact that you are the judges; and you decide, and that you have a duty to, as Mr. Carr said. And his Honor will give you the rules that you follow. It is as simple as all that.

I do not ask you to convict a person if you have any reasonable doubt as to his guilt. If you have any such reasonable doubt, you should acquit. But if you have no reasonable doubt, as his Honor will tell you, then you should convict. That is all there is to it.

In going over this part of my argument you can see that it has to be rambling to a great extent because I am going to try to answer some of the things which Mr. Carr said and bring some other material to your notice in connection with what Mr. Carr has said.

First of all I want to call your attention to this: As I [653] sat and listened to Mr. Carr yesterday discuss what is and what is not cricket, what I did that I should have done or maybe didn't do something else, I heard him tell you about Mr. Loud, Mr. Barry and the others. After a while I was sort of confused. I began to wonder,

"Well, who is the defendant in this case, anyway? Who is being tried here? My impression always was that Paul Ziegler is the defendant in this case and that if the evidence proves beyond a reasonable doubt that Paul Ziegler is guilty, that is the only question before you ladies and gentlemen."

But I heard so much about what is cricket and what is not cricket, as I say I didn't quite know. Possibly I am on trial here. But, of course, I am not, nor are my acts.

That is a method that is a very simple one. I think it is used very often: divert the attention of the people from the facts on which they are concentrating. Let them look at something else. Don't look at Mr. Ziegler. Look at Mr. Strong. He is not cricket. Look at Mr. Loud. Look at Mr. Barry. Look at anybody you please but not Mr. Ziegler. Concentrate on what Mr. Strong did or didn't do.

That has nothing to do with this case, ladies and gentlemen. If on the evidence which is before you now you feel that the defendant is guilty, that is one thing. If you feel that he is not, that is something else.

Now, let us take up these specific things because I don't [654] usually like to leave unanswered various charges of a type which might indicate that I am not trying to bring before you the whole truth. I said that is my job to bring before you the whole truth. Mr. Carr said something about my amending the information. I amended the information, yes. That is permissible. It is a practice that can be followed. If it were not permissible, his Honor would not have allowed it. I am authorized to amend the information, and you are now considering the case on the basis of the amended informa-

tion. It does not make any difference what it was before that time.

The charges as they now stand are the charges in the amended information which his Honor read to you. Those are the charges. And as to why I amended it, that has nothing to do with this case.

As I say, it is my job to present the case; and if I feel, in the performance of my duty, that I should amend an information, I shall do it if the court permits me to. If the court does not allow it, then, of course, I don't amend it.

In this case the court allowed it. The information is amended. We are proceeding on the amended information. There is no secret as to that at all. Then there was some question raised as to why Mr. Ziegler was named a partner when the evidence shows that he was not a partner.

Let me ask you, ladies and gentlemen, supposing you were proceeding in preparing a case and you obtained documents from [655] an official Government agency on which the person whose case you were considering had signed his name and then as his title wrote "partner, West Coast Supply Co.," do you think you would be reasonable in assuming that when he did that that he was telling the truth that he is a partner in the West Coast Supply Company?

Frankly I still don't know whether he is or is not because, as I have shown you, these forms which are in evidence he wrote in his own hand that he is a partner, and then on the stand he says he is not.

I don't see any reason for believing him any more readily on the stand than believing what he said before; and I don't know whether he is or is not a partner. But

that does not make any difference at this stage of the case because, as his Honor informed you, the West Coast Supply Company is no longer in this case and that the issue of his partnership or whether he is a partner has nothing to do with the present status of the case. There is only one defendant here, and that defendant is Paul J. Ziegler.

Then Mr. Carr brought out something about the fact that I, as Government counsel, did not introduce certain registration forms which purport to show who are the partners.

Again, there are several reasons for that; and I am only explaining this to you now because Mr. Carr made something of it. [656]

The first reason is that we have two conflicting sets of forms. Here is one set of forms about which Mr. Carr talked which purport to set out who were the partners. But on the other hand we have the signature of Paul J. Ziegler on another form on which he says he is a partner.

I still don't know whether he is a partner or not.

The second reason is a much more sound one in this case, that these forms are dated 1942 and 1943. Supposing he was not a partner in '42 and '43, and in 1945 he files a form that says he is a partner? I am not interested in what happened in 1942 or '43. We are interested in exactly what happened in July, 1946, to be precise.

Some of this evidence as to these forms in 1945 was allowed by his Honor into the case to help you determine what was going on in July, 1946. And if you need any explanation as to why I did not introduce them, that is it. I don't go back to 1942 and '43 when I have so much better evidence in the form of a document filed by the defendant himself in 1945.

As you remember, Mr. Carr discussed the fact that Mr. Loud testified that the defendant said to him he was going to get sugar, or words to that effect. Mr. Carr said that was incredible. People just don't do things like that.

Don't they? Don't they? Have you never heard of people bragging about what they are doing and telling in advance? Have you never heard of people going out and telling the whole [657] story of what they are going to do in advance? Doesn't that happen?

That happens time and again, ladies and gentlemen. A lot of people are arrogant. A lot of them are braggarts. A lot of them have this I-don't-care attitude.

There are various reasons why they do it. I am not a psychologist. I cannot analyze their reasons. But the fact remains that it is common experience that they do it. They do it time and again.

As a matter of fact, in this case we have much more convincing proof that it was done because the thing that Mr. Loud said Mr. Ziegler had told him he was going to do, to try to get sugar any way he could, isn't that exactly what he did in this case? Isn't that exactly what he was trying to do throughout May and June, 1946? And isn't that precisely what he ultimately did when he issued these documents over which there is a dispute, apparently, as to whether they are pieces of paper or checks?

Why did he issue these documents if it was not to get sugar? Was he not trying to get sugar all the time? Wasn't he trying to get it any way he could? And isn't that exactly what Mr. Loud said the defendant told him he was going to do?

I don't see any reason why it should be assumed that Mr. Loud is not telling the truth in view of all those circumstances and in view of the fact that Mr. Loud is a person who [658] has no direct interest in this case.

This is all part of the process that was gone through here yesterday afternoon of drawing your attention away from the defendant to somebody else. Something was brought up about Barry. Mr. Barry first testified that the checks came to him as they were. There was only one check. That came to him as it was, as it now appears.

On cross examination Mr. Carr refreshed his recollection, and Mr. Barry was not reluctant to admit as to what happened. He remembered then what happened, yes. And he told you the truth as to what happened. Then he recalled it.

You will remember that he told you that he wanted to know about this check, and he called up Paul Ziegler and Paul Ziegler was the one who gave Mr. Barry authority to fill in the words "West Coast Supply Company."

You will recall that testimony. And again, as I said yesterday, if my recollection is not exactly as yours, it is yours that counts. I am doing what I can to stay as close as I can, but sometimes it is hard to remember the exact words. So that this business of not cricket and not introducing this and not introducing that, and "what about Loud? What about Barry?"

It is the same sort of thing that is used to distract attention. You know about it yourself in your everyday lives.

I ask you ladies and gentlemen to keep one thing in mind: [659] that° what we are here to do is what Mr. Carr said at one part, to try the defendant on these particular charges.

If you have any mistaken impression that I am asking you to consider these acts on any other charges, remove that from your mind. I am not asking you anything of the sort. These are the charges that govern, and these are the charges on which the Government proceeds. These are the charges on which the Government has offered the proof, and these are the charges that the Government contends it has proved beyond a reasonable doubt.

I shall go into that in a few minutes. I shall show you how again.

We are not going off on a tangent or asking you to find anything else. And his Honor will instruct you in great detail on that. There will be no problem on it at all.

You have heard a lot here this morning, as well as last night, from Mr. Carr; and you have heard a lot from the defendant on the stand as to the checks being issued in a certain way and as to what the word "issue" means, as to what the word "depositor" means, as to what various other words mean.

As I gather it, the sum and substance of all those discussions, all those statements, is that he cannot be guilty because he did not do it according to Hoyle, which reminds me of something I heard the other day which I think best exemplifies my answer to that situation. [660]

I had heard of somewhere a person who had been driving at about 50 or 60 miles an hour in disregard of the local ordinances and happened to hit someone and kill him. He was immediately surrounded by police and others. He was placed under arrest. The driver was very indignant. He said, "Why are you holding me here? What have I done?"

They said, "You have killed a person with your car."

“Why,” he says, “You can’t hold me on that. I haven’t even got a driver’s license.”

That is the sum and substance of the argument the defendant makes. He did not issue these checks according to Hoyle, according to the regulations. So you can’t hold him for the crime with which he is charged.

But I will show you, as you will find upon listening to his Honor’s instructions, that that is not at all as clear as Mr. Carr says. I shall attempt to show you that these checks were issued according to Hoyle; that the defendant is the person responsible for the issuance of those checks; that the defendant did know that there was not sufficient balance in the account of the West Coast Supply Company to cover those checks and that subsequently he took the sugar, although he knew that it was bought and that it was delivered upon the basis of a check for which there was not sufficient balance.

Before I go into that phase of it, I should like to point this out: [661]

Mr. Carr has pointed out to you what he says is some conflict between the telegram and the Executive Order. There is no conflict, ladies and gentlemen. That is none at all.

If you will examine those two documents, you will recall what was said about that. You will find that the Executive Order continues the Office of Price Administration for the purpose of continuing to administer the rationing laws; that the rationing laws did not end. They continued in effect. They were under the Second War Powers Act.

If you will recall the telegram, you will recall that that is exactly what the sugar company was saying, or who-

ever wrote the telegram: "the rationing laws will continue in effect."

There was no difference. And if there was a difference, it would not make the slightest bit of difference in this case because we are not charging the defendant with understanding or not understanding a particular telegram. We are charging him with having acted in violation of a specific law. And knowledge of the law is not material here. Ignorance of the law is no excuse, no more excuse today than it ever was.

You cannot violate laws and then plead as a complete defense that you didn't know about them.

You listen to his Honor's instructions. You will find out about that in more detail.

Mr. Carr said to you that he has broad shoulders and you ought to take into account and consider that his client acted [662] after consulting Mr. Carr.

Did he? Mr. Carr told you that his client consulted him somewhere around July 12th. You will remember that. But his client acted on July 1st. Mr. Carr was not consulted until at least 10 days after his client committed these acts. So how could his client have been guided by the advice of his attorney whom he did not see until 10 days later?

It is a physical impossibility, and he simply was not guided by any advice of Mr. Carr. He did not see Mr. Carr until 12 days later. And seeing him was after the act was complete.

I don't know what they discussed; but they certainly were not discussing whether his client should do that very thing which he did because his client had already done it. He had done it on July 1st.

As far as the sugar being received, I think Mr. Carr himself stated that all the sugar was received before July 12th and that his client did not see him until after July 12th.

How could his client be getting advice as to the receipt of the sugar from the attorney if he does not see his attorney until after he gets the sugar? There is absolutely nothing to it.

Without going into all the other matters which Mr. Carr has brought out, most of which are covered by the instructions which his Honor will give you, there you will see the accurate [663] and correct and full statement of the law. That is the law upon which the Government relies. That is the law that the Government says was violated by these acts. You will hear that statement from his Honor.

However, I should like to take up for a moment just the bare outline again since there has been so much talk yesterday afternoon and today about various other things. I should like to point out for your attention again the bare outlines of this case.

First I want to state to you again that the Government is only charging the violation which is contained in the counts of the information. We are not charging any other violation. If you find beyond a reasonable doubt that the defendant violated the law as charged in these counts, then you will find him guilty.

As to what he did otherwise, that has nothing to do with this case. These are the counts. These are the counts on which we stand. We do not waiver from them. We do not want you to consider anything else except these counts in the information.

These counts in the information, as Mr. Carr has pointed out and as I have pointed out, split up evenly into two portions. Counts One, Three, Five and Seven deal with the issuance of ration checks.

Now, we say, of course, that these are ration checks, although the defendant says they are pieces of paper. We say that these are ration checks, and these are the documents about [664] which we are talking.

How much more time do I have?

The Clerk: Your time is up at 12:22.

Mr. Strong: Thank you. So that counsel deals with the check for 600,000 pounds issued to the Union Sugar Company. That check, as you will remember, went through. It was charged against the account of the West Coast Supply Company at the bank; and, as you will remember, the testimony of the official of the bank when the check came in, he called up Paul Ziegler and pointed out that the account was way overdrawn when this check came in; that he did not get to talk to Mr. Ziegler one day. Then he talked to him two or three days later, and Mr. Ziegler, in effect, told him to post it as an overdraft.

Now, just diverting for a minute, if Mr. Ziegler did not intend to issue this check against the account of the West Coast Supply Company, why did he tell the bank to post it as an overdraft against that account?

Why did he not say to the bank official, "Why, I don't know what you are talking about. There is no check issued for 600,000 pounds against the West Coast Supply Company. You can't charge any such check against that account."

Did Mr. Ziegler say anything like that? He said, "Post it as an overdraft."

That, in substance, is what he told him. That was what was done. [665]

This check relates to Count One. Count One charges, in substance, that the defendant in this case only—Paul Ziegler now—“willfully and unlawfully issued and caused to be issued . . .”

It doesn't only say that he issued himself. It says “. . . caused to be issued . . .”

Remember that. That is important.

“. . . a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued to the Union Sugar Company . . .”

That is what it says on the check, to the Union Sugar Company.

“. . . a sugar ration check . . .”

I say to you that this is a sugar ration check.

“. . . drawn by and on behalf of . . .”

It doesn't just only say “drawn by.” It says “drawn by and on behalf of.” Then it goes on to discuss the details of this check.

You have heard a lot of discussion here as to who put the words “West Coast Supply Co.” on there.

I say to you ladies and gentlemen it doesn't make the slightest bit of difference who put the words “West Coast Supply Co.” on any of those four checks. [666]

First of all, Mr. Carr in his argument treats these four checks as though it is conclusively established that they all went out of Paul Ziegler's hands without the words “West Coast Supply Co.”

I don't remember that it is conclusively established in that respect. My recollection is that at least two of these witnesses who received these checks testified that the check arrived exactly as it appears today—in other words, with the words "West Coast Supply Co." right on the face of the checks.

Mr. Carr: I submit that is not the evidence, and I ask your Honor to ask counsel to stick to the evidence because that is a very crucial part of this case.

The Court: Ladies and gentlemen, you are the sole judges of the evidence in the case. The attorneys may disagree on its interpretation, but you alone are to find the facts; and if you find that either side has misrepresented the facts, you will be governed by your own recollection of the facts.

Mr. Strong: You will remember Mr. Neff, the young fellow. I don't remember what sugar company he was with. But you will remember he was the one who testified about one of these sugar checks.

He testified that the check was received as it now appears.

You will remember Mr. Smith. Do you remember I had four witnesses here in connection with the checks? One was Mr. Leland. One was Mr. Barry. One was Mr. Neff and one was Mr. [667] Smith.

Mr. Neff, as I recall it—and if you recall otherwise, you, of course, are governed by your recollection—testified that the check, as it now appears with the words "West Coast Supply Co." was the way they received it. In other words, it was on there when they got it.

Mr. Smith testified that the words "West Coast Supply Co." were on that check at the time that they received it.

Mr. Barry at first testified that the words were on it. Then on cross examination by Mr. Carr you will remember he remembered what happened more definitely: that he called up Mr. Ziegler, told him he would have to return the check because it did not have the name of the account and that after some conversation Mr. Ziegler authorized the addition of the name "West Coast Supply Company" on that check.

Only one person—Mr. Leland—testified that that name "West Coast Supply Co." definitely was not on the check and he did not know when it got on there.

Now, that is my recollection of the testimony. Of course, Mr. Ziegler testified that on none of these checks was the name inserted. There you have the problem of whom you are going to believe.

Are you going to believe Mr. Neff and Mr. Smith? Or are you going to believe Mr. Ziegler? That is something entirely within your province. [668]

Let us assume for a moment that you believe Mr. Ziegler. Does that help him any? The answer is No, because I say to you, as I am sure the evidence shows, that the purpose of issuing these documents by Mr. Ziegler, with or without that name "West Coast Supply Co.", was so that he could get the sugar that he was buying.

He testified that they wanted ration checks and that is why he did it; that he issued these papers, but to him they weren't ration checks.

Maybe to him they were not ration checks, but to the law they were ration checks. And those people did not want to sell him any sugar without checks. He issued them to be used as sugar ration checks to cover the purchase of that sugar.

He was not issuing these for no purpose at all. It was part of the transaction to get sugar.

His Honor will instruct you, I believe, that it is not necessary for the defendant to commit every act himself: that if you believe beyond a reasonable doubt that he acted through an agent or through some other person and that that agent or other person acted with the defendant's knowledge and that the defendant accepted the benefit of that transaction, that is just as good as if he did it himself.

You listen for that instruction. His Honor will instruct you on the law.

Also, that the defendant is just as much responsible as if [669] he did it himself.

Now, I ask you, ladies and gentlemen, in all reason, do you think that this defendant issued these four documents, not knowing that that name "West Coast Supply Co." had to be used in connection with these documents to make them valid?

Do you think this defendant issued these four documents not knowing that possibly somebody might think it was an oversight on his part and that he would insert that "West Coast Supply Co." name?

In two cases the people testified flatly that these documents came complete with the name.

In one case you will recall one person, Mr. Barry, testified that the defendant specifically authorized them to add the name.

As to the third check, the name got on there; but I submit to you that that is exactly what the defendant intended to happen. He had no other sugar ration account on which to draw. He had none under his name. He had none under the name of the John H. Ziegler Company.

The only account that the defendant's signature could possibly draw any ration credit out of on sugar was the account of the West Coast Supply Company. This defendant had been dealing with all these four sales agents, these brokers, for a long period of time.

In his dealings they knew him as representing the West [670] Coast Supply Company. The sale was made to the West Coast Supply Company.

Do you think this defendant did not know what he was doing when he left off the name?

Let us assume it is true what he says. Do you think he did not know what he was doing when he left off that name? Do you think he did not intend to have somebody else put it in there?

I think he intended exactly what the evidence demonstrated. Of course, what I believe or what I think is immaterial here. You must convince yourself from the evidence—and the evidence alone—but I think that that evidence demonstrates the entire attitude of the defendant, what he was trying to do all the time, the mere fact that he issued four checks and deliberately omitted those words.

You might sometimes issue one check and accidentally omit some words, but he did four.

Would you say that the evidence does not show a deliberate scheme on his part, a plan on his part, to have the very things happen which he says happened here, that somebody entered those names?

Even if you believe his story, it does not help him in the least.

So I think with these checks in evidence and with the testimony concerning these checks the Government has established [671] Counts One, Three, Five and Seven for

each of these checks; and each of these counts charges that a check was willfully issued for an amount larger than there was in the bank, and it charges that he issued or caused to be issued a check drawn "by and on behalf of"

I think the testimony of these witnesses clearly shows that in some instances the defendant issued these checks as they are, and in other instances where he says he did not—and one of the witnesses said somebody else added it—that the defendant intended that that name be added and thereby he caused that check to be issued in that way.

That is exactly what he was doing. There is no difference than standing behind somebody and guiding his hand while he signs a piece of paper. That is what the guider intends to be done. That is why he has got his hand on the wrist and he is moving it around.

I do not think in this case it is any different, even though he may be miles away from the one who adds it. That is what he intended should be done. That is what I believe he thereby caused to be done.

Mr. Carr: At this time, your Honor, I am going to find it necessary to object to the persistent statement of the theory of the case, misleading the jury on the charge involved in the case, so that I won't have to make any further objection.

I just want the record to disclose a persistent course [672] throughout this argument in trying to lead the jury to believe about some charge that is not involved in the case.

The Court: Ladies and gentlemen, you are the sole judges of the facts in the case. Attorneys may disagree as to their interpretation, but you are the sole judges of the facts.

While a United States Judge may comment on the facts properly, I have not done so and shall not comment on them. That is why you were brought here as jurors, and I am sure that you will go over the evidence carefully and determine what are the facts.

Proceed.

Mr. Strong: Again I want to tell you, as I have said before, I am only asking you to look to the information and to be guided by what it charges. I am talking about no other offense. I have no intention of talking about any other offense. These are the only offenses I am talking about, the ones in the information.

Counts One, Three, Five and Seven of the information charge that the defendant issued and caused to be issued—those are the words—willfully issued and caused to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued, in the first count, to the Union Sugar Company a sugar ration check drawn by and on behalf of the defendant for 600,000 pounds.

Count Three of the information has the same language, the same words, except that it is a different check. It is a check for 30,000 pounds to the Spreckels Sugar Company, 30,000 pounds.

Count Five of the information has the same words, only a different check, 660,000 pounds to the Holly Sugar Company.

And Count Seven of the information has the same words as the other four, only it deals with the check for 80,000 pounds to the C. & H. Sugar Company. This is the check (indicating).

You will remember, ladies and gentlemen, that the defendant testified that he paid for the sugar; that he paid for it by check. And the checks are in evidence. The checks of the John H. Ziegler Company are in evidence.

As to four of these checks they are issued directly to the sellers of the sugar. You will find in the upper left-hand corner it says "In payment of the following—Date—Items—Amount" and stamped in "West Coast Supply Co."

I say to you ladies and gentlemen again that I am not interested in how the defendant and his brothers worked their internal operations. That has nothing to do with this charge.

The charges are of two types: the issuance of the checks and the receipt of the sugar.

The issuance of the checks is simple in itself. The receipt of the sugar: the defendant admitted that the John H. Ziegler Company has the sugar and that he is a partner. [674]

Well, let us see Count Two.

Count Two charges that the defendant willfully and unlawfully received a rationed commodity, 380,000 pounds of sugar, from the Union Sugar Company in exchange for a ration document, to-wit, a sugar ration check drawn by or on behalf of the defendant. That is the same check we are talking about in count one, I believe.

He admits that he got the sugar. There is no question as to the fact that there was not enough balance in the account to cover it. So the whole thing relates to this "West Coast Supply Company": who put it on?

Whether the defendant caused it to be put on or put it on himself, that is, as I said when I told you that little

story, the same as the man who got out of the car and says, "you can't arrest me for running somebody down because I haven't even got a license to drive."

Count Four deals with sugar received in exchange for the 30,000-pound check. He admits that he got the sugar.

Count Six deals with 660,000 pounds in return for that 660,000-pound check.

Count Seven deals with the 80,000 pounds.

What do we have in this case really as far as the facts are concerned? Checks were issued. There was not enough balance for any of those checks. Sugar was received on the basis of those checks. [675]

If there was not enough balance and the defendant unlawfully issued these checks, willfully did so; if he knew that there was not enough balance, then when he took that sugar he took it knowing it was in exchange for a ration check which had insufficient balance.

I think the Government's case is completely proved. I don't think there is any question as to that on these facts.

The only point that remains that I think I ought to talk about to you for a minute is this question of willfulness.

Oh, yes. I forgot to bring out this time as I did last time that the defendant was one of the authorized signatures.

When you listen to the instructions on who is a "depositor," about which Mr. Carr told you, you will find out that a person who is acting as an agent for a person who has an account is also regarded as a depositor. You listen to those instructions.

Certainly Mr. Ziegler has an authorized signature on that account was clearly an agent if he was not a principal. There is not problem as to the depositors or anything else in this case so far as I can see.

Now, the one thing that I want to talk to you about for a minute is this business of willfulness.

Ignorance of the law is no excuse. Whether you know about the existence of the law or you don't know about the existence of the law, if you willfully commit the act which is in violation of the law, you have violated the law as charged. [676] The mere fact that you did not know what the law said is immaterial. His Honor will instruct you on that. His Honor will give you a definition of what "willfully" means. You listen to that because that is the law that will govern you. Mistake as to what the law is is no excuse either. Everybody is presumed to know the law, and except insofar as requiring that he act wilfully in the specific thing he did, which definition you will get, there is no requirement that he actually read that Executive Order, none whatsoever. That Executive Order and the rationing laws and the rationing regulations, as his Honor will tell you, were in effect at all times material to this case. Rationing was in effect, and the regulations governing rationing, as his Honor will tell you, were at all times in effect, at all times material in this case. There is not any problem as to the law. But as to whether he acted willfully, whether he did this in such a way that it simply is not an unconscious act on his part, well, he certainly wrote his name when he wrote out these checks. There is no question as to that. He was not asleep when he did that, and he certainly bought the sugar. He was acting consciously

and deliberately when he did that and I think, as I have pointed out, the evidence shows that he certainly intended these checks to be used for that sugar and he certainly intended these checks to be used as ration checks.

In some instances if you consult an attorney before you do [677] anything, that is one of the factors to be considered as to whether you acted willfully. But in this case it has nothing to do with it, because he did not consult the attorney until 12 days after he issued the checks.

How could his attorney's advice have had any effect on his original issuance of the checks?

It seems to me, ladies and gentlemen, that you do not have very many questions to decide in this case because the evidence is rather clear.

Again I repeat to you what I said at the outset. I am interested in putting the truth before you. You have heard some conflicting evidence, and you have heard some evidence that is not conflicting. You have had an opportunity to analyze the witnesses, and you have heard about the way the defendant acted on various other occasions in connection with the issuance, the sending of documents to the Government agency involved.

If you feel that the defendant did not act in the way charged in the information, you should acquit him.

If, on the other hand, you feel that the defendant acted as charged, that he did it willfully and deliberately and intendedly; that he did it for the purpose of getting sugar, as the Government charges and as I have tried to point out to you, then you should convict him.

Your duty is equally clear in either respect. I thank you. [678]

The Court: Ladies and gentlemen of the jury, it is now six minutes past 12:00. I deem it better to give you the instructions after the recess.

You will not discuss the matter among yourselves or permit anyone to discuss it in your presence. Do not form or express any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court.

We will now take a recess until 2:00 o'clock.

(Whereupon, at 12:06 o'clock p. m. a recess was taken until 2:00 o'clock p. m. of the same day.) [679]

Los Angeles, California, Tuesday, February 11, 1947
2:00 P. M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 19,106 criminal,
United States v. Paul J. Ziegler for further jury trial.

Mr. Strong: Ready for the Government.

Mr. Carr: The defendant is ready.

The Court: Stipulate the jury is present, gentlemen?

Mr. Strong: So stipulate.

Mr. Carr: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

COURT'S INSTRUCTIONS TO THE JURY

The Court: Members of the jury, it becomes my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you.

On the other hand, it is your exclusive province to determine the facts in the case and to consider the evidence for that purpose.

The United States Attorney has filed an information in this case in this court on December 31, 1946, United States of American, plaintiff, versus the West Coast Supply Company, [680] a partnership, and Paul J. Ziegler.

The United States Attorney charges:

"Count One: On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, willfully and unlawfully performed acts prohibited by Section 15.7 (d) of Third Revised Ration Order No. 3, in that said defendants did willfully and unlawfully issue and cause to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued to the Union Sugar Company a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler in the amount of Six Hundred Thousand (600,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles,

when the West Coast Supply Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check.

“Count Two: From on or about July 3, 1946, to on or about August 17, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, willfully and [681] unlawfully performed an act provided by Section 2.9 of General Ration Order No. 8, in that said defendants did wilfully and unlawfully receive a rationed commodity, Three Hundred and eighty Thousand (380,000) pounds of sugar from the Union Sugar Company, in exchange for a ration document, to wit, a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler in the amount of Six Hundred Thousand (600,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, dated July 1, 1946, and issued by the defendants, when said defendants knew and had reason to believe that the said ration document was not validly issued because the said West Coast Supply Company did not have a sugar ration bank account in said bank with a balance therein sufficient to cover the amount of said check.

“Count Three: On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed acts prohibited by Section 15.7 (d) of Third Revised Ration Order No. 3, in that said defendants did wilfully and unlawfully issue and cause to be issued a sugar ration check for an

amount larger than the balance in the account on which it was drawn, less the amount of issuing and causing to be issued to the Spreckels Sugar Company a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler in the amount of Thirty Thousand (30,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, when the West Coast Supply Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check.

“Count Five: On or about July 1, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed acts prohibited by Section 15.7 (d) of Third Revised Ration Order No. 3, in that said defendants did wilfully and unlawfully issue and cause to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued to the Holly Sugar Company a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler in the amount of Six Hundred and Sixty Thousand (660,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, when the West Coast Supply [683] Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check.

“Count Six: From on or about July 1, 1946, to on or about August 30, 1946, in Los Angeles County, California, within the Central Division of the Southern dis-

trict of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed an act prohibited by Section 2.9 of General Ration Order No. 8, in that said defendants did wilfully and unlawfully receive a rationed commodity, Six Hundred and Sixty Thousand (660,000) pounds of sugar from the Holly Sugar Company, in exchange for a ration document, to wit, a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler in the amount of Six Hundred and Sixty Thousand (660,000) pounds of sugar on the Union Bank and Trust Company of Los Angeles, dated July 1, 1946, and issued by the defendants, when said defendants knew and had reason to believe that the said ration document was not validly issued because the said West Coast Supply Company did not have a sugar ration bank account in said bank with a balance therein sufficient to cover the amount of said check.

“Count Seven: On or about July 1, 1946, in Los Angeles County, California, within the Central Division [684] of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed acts prohibited by Section 15.7 (d) of Third Revised Ration Order No. 3, in that said defendants did wilfully and unlawfully issue and cause to be issued a sugar ration check for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing and causing to be issued to the C & H Sugar Company a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler in the amount of Eighty Thousand (80,000) pounds of sugar, on the Union

Bank and Trust Company of Los Angeles, when the West Coast Supply Company had a balance in its accounts at said bank in an amount insufficient to cover the amount of said check.

“Count Eight: On or about July 5, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants, West Coast Supply Company, a partnership, and Paul J. Ziegler, wilfully and unlawfully performed an act prohibited by Section 2.19 of General Ration Order No. 8, in that said defendants did wilfully and unlawfully receive a rationed commodity, Eighty Thousand (80,000) [685] pounds of sugar from the C. & H Sugar Company, in exchange for a ration document, to wit, a sugar ration check drawn by and on behalf of the said West Coast Supply Company and Paul J. Ziegler in the amount of Eighty Thousand (80,000) pounds of sugar, on the Union Bank and Trust Company of Los Angeles, dated July 1, 1946, and issued by the defendants, when said defendants knew and had reason to believe that the said ration document was not validly issued because the said West Coast Supply Company did not have a sugar ration bank account in said bank with a balance therein sufficient to cover the amount of said check.”

To each of these counts the defendant has pleaded not guilty, and that puts on to the Government proof of every material allegation of those counts that they must prove beyond a reasonable doubt.

By the filing of this information no presumption whatever arises to indicate that the defendant is guilty or that he has any connection or responsibility for the acts charged against him.

A defendant is presumed to be innocent at all stages of the proceedings until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt.

The burden is not upon the defendant to establish his [686] innocence, and this rule applies to every material element of the offense. Mere suspicion or mere probability will not authorize a conviction. A reasonable doubt is such doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt.

In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture, for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you.

Without it being re-stated or repeated, you are to understand that the requirement that a defendant's guilt is shown beyond a reasonable doubt is to be considered in connection with and as accompanying all of the instructions that are given to you.

The Second War Powers Act of 1942, as it applies during the period involved in this case, provides in part as follows:

“* * * Whenever the President is satisfied that the fulfillment of requirements for the defense of

the [686] United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.”

The Act also provides that:

“Any person who willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor”

The Second War Powers Act, as applicable in this case, also provides that:

“The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe”

I now instruct you that at all times material to this case, the Office of Price Administration was the agency which was given the power to ration sugar and to prescribe regulations as to such rationing, and that it did do so.

The said Second War Powers Act of 1942 is thus the law, [687] authorizing the rationing of various commodities, including sugar. This law was adopted by the Congress of the United States pursuant to authority given to Congress by the Constitution. You are not to be concerned with the wisdom or unwisdom of this Act or the Executive Orders or Regulations thereunder, or the

general theory or policy of rationing. They are the law of the land and you must be governed by them in the determination of this case.

Among the Rationing Regulations promulgated under the authority of the said Second War Powers Act of 1942 is General Ration Order No. 8 and 3rd Revised Ration Order No. 3. I now instruct you that these ration orders were in effect on all dates material to this case. The termination on July 1, 1946, of the Emergency Price Control Act of 1942 had no effect upon sugar rationing, since sugar rationing was in effect under the Second War Powers Act, which did not terminate.

I further instruct you that on June 30, 1946, the President of the United States issued an Executive Order by which he continued in effect the Office of Price Administration as the enforcement agent for that purpose. This the President had the right to do.

Sec. 2.9: “. . . No person shall . . . receive any rationed commodity in exchange for a ration document if he knows or has reason to believe that the ration document was not validly issued or that it was not [688] acquired in accordance with a ration order by the person tendering it.”

By “evidence” is meant sugar ration checks, coupons or stamps.

Definitions: “‘Check’ means a sugar ration check, in the form prescribed by the Office of Price Administration, drawn by a depositor against his account and made payable to the account of a named person.”

I charge you that “alteration” means a change in the terms of a written instrument by a party entitled thereunder, without the consent of the other party, by which its meaning or language is changed.

“Ration credits” means the credits in an account reflecting deposits of stamps, coupons or checks.

You are instructed that the evidence adduced at the trial was insufficient to prove the defendant, Paul J. Ziegler, was at any of the times mentioned in any or all counts of the information a partner of the West Coast Supply Company. You will accordingly find, therefore, that Paul J. Ziegler was not at any of the times mentioned in the information a partner of the said West Coast Supply Company.

In each count of the information, defendants are alleged to have willfully and unlawfully done the acts and things of which they are accused. In this connection you are instructed [689] that there is a very real and vital difference between simply doing an act and doing the act willfully.

In the first case no intent is involved, while in the second case of willfully doing the act the element of guilty knowledge and specific intent to do that which the law denounces are involved and constitutes the gist of the offense.

You are instructed that under the statute involved in this proceeding it is necessary, in order to find the defendant guilty, that you find he violated the law willfully.

The word “willfully” as used in the information means an intentional, conscious doing of the act prohibited; that is, intending the result which actually comes to pass, without regard or believing it is lawful or, in other words, marked by careless disregard as to whether or not one has the right so to act.

To express it in another way, it means purposely or obstinately, or designed to describe the attitude of a per-

son who, having a free will or choice, either intentionally disregards the law or is plainly indifferent to its requirements.

You should not be influenced in reaching your verdict in this case solely by reason of the amount of sugar involved, for you must, in order to convict a defendant of any count of the information, find that each and every material allegation thereof has been proved beyond a reasonable doubt.

You are instructed that, if you find from the evidence that [690] at the time any or all of the sugar ration checks alleged in Counts One, Three, Five and Seven of the information were issued, there were sufficient ration credits available in any or all of the accounts of the West Coast Supply Company in the Union Bank and Trust Company to cover said sugar ration check or checks, then you must acquit the defendant, Paul J. Ziegler, on the counts relating to said checks.

The law does not require that the defendant have actual knowledge of the provisions of the Second War Powers Act of 1942, of General Ration Order No. 8, or the Third Revised Ration Order No. 3, governing the rationing of sugar. All persons, including those who use or deal in sugar, are charged by law with notice of the statute and ration orders and their contents because of publication in the Federal Register, a daily official Government publication which is available to all persons.

The statute which makes the mere publication of a law or regulation in the Federal Register constructive notice of its contents to every person also contains a provision to the effect that such publication of a document creates a rebuttable presumption that the document was duly issued, prescribed, promulgated, filed.

The information upon which the defendants are being tried contains eight counts. Counts One, Three, Five and Seven thereof charge the defendants with having willfully and [691] unlawfully issued and caused to be issued a sugar ration check, each for an amount larger than the balance in the account on which it was drawn, less the amount of outstanding checks drawn on that account, by issuing or causing to be issued a sugar ration check drawn by and on behalf of said West Coast Supply Company and Paul J. Ziegler when the West Coast Supply Company had a balance in its account in an amount insufficient to cover the amount of each of said checks. The amount of the check in Count One is 600,000 pounds of sugar; in Count Three, 30,000 pounds of sugar; in Count Five, 660,000 pounds of sugar; and in Count Seven, 80,000 pounds of sugar.

The Government is required to prove each and every material allegation of each count of the information beyond a reasonable doubt. Unless every material allegation of the charge is proved against the defendant, you must acquit the defendant.

Counts Two, Four, Six and Eight charge that defendants willfully and unlawfully received a rationed commodity, to-wit, sugar, in exchange for a sugar ration check drawn by and on behalf of the West Coast Supply Company and Paul J. Ziegler on the Union Bank and Trust Company of Los Angeles and issued by the defendants when the said defendants knew and had reason to believe that the check was not validly issued because the West Coast Supply Company did not have a sugar ration bank account in said bank with a balance sufficient to cover the amount of the check. [692]

Count Two charges the receipt of 380,000 pounds of sugar; Count Four, 30,000 pounds of sugar; Count Six, 660,000 pounds of sugar; Count Eight, 80,000 pounds of sugar.

The Government is required to prove each and every material allegation of each count of the information beyond a reasonable doubt. Unless every material allegation of the charge is proved against the defendant, you must acquit the defendant on that count.

Paragraph 15 of Section 24.1 of Third Revised Ration Order No. 3 provides:

“‘Issue’ when used with respect to a check, means the delivery of a completed check to the person to whose account the check is made payable.”

Paragraph 8 of the same section provides:

“‘Delivery’ means the transfer or physical possession or the transfer of a document of title.”

Paragraph 16 of the same section provides in part that:

“‘Person’ means any individual, partnership, corporation, association, or other organized group of persons . . . or any agency thereof”

If you believe beyond a reasonable doubt that the defendant acted by or through an agent, employee or other person and that such agent, employee or other person acted with the knowledge of the defendant, and that the defendant knowingly accepted the benefit of his agent, employee or other person’s [693] act, you will hold the defendant to be responsible as if he had personally done the act which was performed by his agent, or employee, or other person.

“Whoever directly commits any act constituting an offense defined in any law of the United States, or aids,

abets, counsels, commands, induces or procures its commission, is a principal.”

No personal feeling or prejudice must be allowed in any manner to influence or direct you in connection with any issue in this information. It is of no consequence whether you may or may not approve of the appearance, conduct or general bearing of the defendant. If, in your opinion, having heard all the testimony, you are not able to say that after a full and fair comparison of the evidence that you believe that the defendant is guilty to a moral certainty and beyond a reasonable doubt, you are instructed and directed to return a verdict of not guilty.

I instruct you that if the defendant, Paul J. Ziegler, honestly and in good faith sought the advice of a lawyer as to what he might lawfully do in the matter involved in this action and fully and honestly laid all of the facts before his counsel, and in good faith and honesty followed that advice, relying upon it and believing it to be correct, but only intended that his acts should be lawful, he could not be found guilty of this offense which involves willful and unlawful [694] intent, even if such advice were an inaccurate construction of the law. But, on the other hand, no man can willfully and knowingly violate the law and excuse himself from the consequences thereof by pleading that he followed the advice of counsel.

The court has given you instructions embodying such rules of law as may be necessary to assist you in arriving at a verdict. As to some of these instructions, their application depends upon the light in which you view the evidence.

The fact that the court has given you instructions as to particular rules of law must not be taken by you as an

indication that such rules are necessarily applicable to the cause on trial, or as indicating that the court considers them necessarily applicable.

Where there is a conflict of evidence, the question as to whether a particular rule of law is applicable depends frequently and solely upon the conclusion as to what the facts are, and the jury are the sole judges of the facts.

If any instruction is applicable only if a particular situation or state of facts exists, and if you find that no such situation or state of facts exists, then you should not take such instruction into consideration in your deliberations.

You are the sole judges of the credibility and weight which is to be given to the different witnesses who have [695] testified upon this trial. In judging the credibility of witnesses you shall have in mind the law that a witness is presumed to speak the truth. This presumption, may be repelled by contradictory evidence, by the manner in which the witness testifies, by the character of his testimony or by evidence.

In judging the credibility of the witnesses in this case you may believe the whole or any part of the evidence of any witness or may disbelieve the whole or any part of it as may be dictated by your judgment as reasonable men and women.

You should carefully scrutinize the testimony given, and in so doing consider all the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relation which he bears to the parties to this action, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if

at all, and every matter that tends reasonably to shed light upon his credibility.

You are not bound to decide in conformity with the testimony of a number of witnesses which does not produce conviction in your minds as against the declarations of a lesser number or a presumption or other evidence which appeals to your mind with more convincing force.

This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses [696] merely from caprice or prejudice or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on opposing sides. It means that the final test is not in the relative number of witnesses but in the relative convincing force of the evidence.

The testimony of one witness entitled to full credit is sufficient to support the proof of any fact that would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary, if from the whole case considering the credibility of the witnesses and after weighing the various factors of evidence the jury should believe that there is a balance of probability pointing to the accuracy and honesty of the one witness.

A witness false in one part of his testimony is to be distrusted in others; that is to say, you may reject the whole testimony of a witness who willfully has testified falsely to a material point, unless from all the evidence you shall believe that the probability of truth favors his testimony in other particulars.

The defendant has offered himself as a witness and has testified in the case. Having done so, you are to

estimate and determine his credibility in the same way as you would consider the testimony of any other witness.

It is proper to consider all of the matters that have [697] been suggested to you in that connection, including the interest the witness may have in the case, his hopes, his fears and what he has to gain or lose as a result of your verdict.

You are not limited in your consideration of the evidence to the bald expressions of the witnesses. You are authorized to draw such inferences from facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men and women.

Admissions of a defendant are to be received with caution. Evidence may be either direct or indirect.

Direct evidence is that which proves a fact in dispute directly without an inference or presumption and which in itself, if true, conclusively establishes the fact.

Indirect evidence is that which tends to establish a fact in dispute by proving another fact which, though true, does not of itself conclusively establish the fact in issue but which affords an inference or presumption of its existence.

Indirect evidence is of two kinds, namely, presumptions and inferences.

A presumption is a deduction which the law expressly directs to be made from particular facts. Unless declared by law to be conclusive, it may be controverted by other evidence, direct or indirect; but unless so controverted, the jury is bound to find according to the presumption.

An inference is a deduction which the reason of the jury draws from [698] the facts proved. It must be

founded on a fact or facts proved and be such a deduction from those facts as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business or the course of nature.

The word "propensity" as used in these instructions means an act or habitual inclination or tendency.

The law in regard to circumstantial evidence is this: In order to justify a jury in finding a verdict of guilty based entirely on circumstantial evidence, the circumstances must not only be consistent with the guilt of the defendant but they must be inconsistent with any other reasonable hypothesis that can be predicated on the evidence. Or, stated in another form, it is not sufficient that the circumstances proved coincide with or account for and, therefore, render probable the hypothesis of guilt asserted by the prosecution, but they must exclude to a moral certainty and beyond a reasonable doubt every other hypothesis but the single one of guilt, or the jury must find the defendant not guilty.

In order to warrant a conviction of crime from circumstantial evidence, each fact necessary to the conclusion sought to be established must be proved by competent evidence beyond a reasonable doubt.

All the facts necessary to the conclusion must be consistent with each other and with the main fact sought to be proved, and the circumstances taken together must be of a conclusive nature, leading on the whole to a satisfactory conclusion and producing, in effect, a reasonable and moral certainty that the defendant and no other person committed the offense charged. And unless the evidence does so, it will be your duty to acquit the defendant.

So, ladies and gentlemen, you will observe that there is nothing very peculiar or hard to understand about this doctrine of circumstantial evidence.

The jury, in the first place, must determine from the testimony of the witnesses what are the facts and circumstances in the case, the facts and circumstances which you believe have been established by the testimony; and then you simply apply your common sense and judgment to a consideration of what deductions or inferences or conclusions ought to be drawn from the facts.

If, on consideration of all the facts which you may believe to have been established by the evidence, you are satisfied in your minds beyond a reasonable doubt that the defendant is guilty, then it is your duty to so declare. But if you are not so satisfied, it will be your duty to render a verdict of not guilty.

You shall not consider as evidence any statement or argument of counsel made during the trial, unless such statement [700] or argument was made as an admission or stipulation conceding the existence of a fact or facts, or you find justified by the evidence.

You must not consider for any purpose any evidence offered or rejected or which has been stricken out by the court. Such evidence is to be treated as though you had never heard it.

You are to decide this case solely from the evidence that has been admitted by the court and the inferences that you may reasonably draw therefrom and such presumptions as the law may deduce therefrom as directed in my instructions and in accordance with the law as I shall state it to you.

At times throughout the trial the court has been called upon to pass upon the question whether or not certain

evidence was properly admitted. With such ruling and the reason for them you are not to be concerned.

Whether offered evidence is admissible is purely a question of law; and from a ruling on such a question you are not to draw any inference as to what weight should be given the evidence or as to the credibility of a witness. In admitting evidence to which an objection is made, the court does not determine what weight should be given to the evidence.

As to every offer of evidence which has been rejected by the court, you, of course, must not consider the same.

As to any question as to which an objection was sustained, you must not conjecture as to what the answer might have been [701] or as to the reason for the objection.

In judging of the evidence you are to give it a reasonable and fair construction, and you are not authorized because of any feeling of sympathy or other bias to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion.

Whenever after a careful consideration of all the evidence your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me and none should be inferred by you. For that reason you are not to single out any certain sentence or any individual point or instruction and ignore the others,

but you are to consider all the instructions as a whole and to regard each in the light of all the others.

There is nothing peculiarly different in the way a jury is to consider the proof in this case from that by which men and women give their attention to any question depending upon evidence presented to them.

You are expected to use your good sense, consider the evidence for the purpose only for which it has been admitted [702] and in the light of your knowledge of the propensities and tendencies of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict.

In determining what your verdict shall be you are to consider only the evidence before you. To the jury exclusively belongs the duty of determining the facts. The law you must accept from the court as correctly declared in these instructions.

You are instructed that if I have said anything or done anything which has suggested to you that I am inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestion.

While the law permits the judge of this court to express an opinion on the evidence, I have not expressed nor intended to express, nor have I intimated or intended to intimate any opinion as to what witnesses are or are not worthy of credence, what facts are or are not established or what inferences should be drawn from the evidence adduced.

If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

You must weigh and consider this case without regard to [703] sympathy, prejudice or passion for or against any party to this action. The attitude of jurors at the outset of their deliberations is a matter of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused and he may hesitate to recede from an announced position if and when shown that it is fallacious.

Remember that you are not partisans or advocates in this matter, but you are judges. The final test of the quality of your service will lie in the verdict which you return into this court room, not in the opinions any of you may hold as you retire.

Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case.

To that end the court would remind you that in your deliberations in the jury room there can be no triumph, excepting the ascertainment and declaration of the truth.

It is your duty as jurors to consult with one another and deliberate with a view to reaching a verdict, if you can do so, without violence to your individual judgment.

To each of you I would say that you must decide the case for yourself but should do so only after a consideration of the [704] case with your fellow jurors, and you

should not hesitate to change an opinion when convinced that it is erroneous.

However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors or any one of them favor such a conclusion.

In other words, you should not surrender your honest convictions concerning the weight or effect of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

Upon retiring to your jury room you will select one of your number to act as foreman who will preside over your deliberations and who will sign the verdict to which you agree.

As soon as you shall have agreed upon a unanimous verdict, you shall have it signed and dated by your foreman and then shall return with it into this court room.

A blank form of ballot will be given to you:

“In the District Court of the United States,

“In and for the Southern District of California, Central Division

“United States of America, Plaintiff, versus Paul J. Ziegler, Defendant, No. 19106 Criminal, Verdict of the Jury.

“We, the jury in the above entitled case, find the defendant Paul J. Ziegler”

Then there is a blank line, and in that blank line you [705] will write the word “guilty” or “not guilty as charged in the first count of the information.”

A similar line has been typed into this form of ballot for each of the counts, and in each one of those blank lines you will write either "guilty" or "not guilty."

"Dated: Los Angeles, California, February . . ."

Then a blank which you will fill in,

". . . 1947."

Then there is a blank line under which there are the words "Foreman of the jury," to be signed by the foreman.

Are there any additional exceptions to the ones that are already in the record, gentlemen?

Mr. Strong: None, your Honor.

Mr. Carr: None, your Honor.

The Court: Swear the bailiffs.

(Whereupon, the bailiffs were duly sworn.)

The Court: You may retire to the jury room.

(Whereupon, at 2:49 o'clock p.m. the jury retired to the jury room to deliberate.)

The Court: Will counsel for the defendant and the defendant check the exhibits before they go to the jury room?

(Brief pause in the proceedings.)

Mr. Carr: Are you sending the information in, your Honor?

The Court: What? [706]

Mr. Carr: Are you sending the information in?

The Court: Is there any suggestion on the part of counsel?

Mr. Carr: I should like for it to go, your Honor, because there are a number of counts.

The Court: All right, that settles it.

Mr. Strong: I have no objection.

The Court: It will go.

The Clerk: The information is to go to the jury, your Honor?

The Court: Yes. Mr. Carr has suggested he would like to have the jury have it, and the Government has no objection. So the jury is permitted to have it.

(Court in recess as to the above-entitled cause.)

(At 4:33 o'clock p.m. the jury returned to the court room.)

The Court: Do you stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Stipulate the defendant is in court?

Mr. Strong: So stipulated.

Mr. Carr: So stipulated.

The Court: Ladies and gentlemen of the jury, have you agreed upon a verdict?

The Foreman: We have, your Honor. [707]

The Court: Will you hand it to the bailiff?

The clerk will read the verdict.

The Clerk: "In the District Court of the United States, in and for the Southern District of California, Central Division. United States of America, Plaintiff v. Paul J. Ziegler, Defendant, No. 19106 Criminal, Verdict of the Jury.

"We, the jury in the above entitled case, find the defendant Paul J. Ziegler, guilty as charged in the first count of the information; guilty as charged in the second count of the information; guilty as charged in the third count of the information; guilty as charged in the fourth count of the information; guilty as charged in the fifth count of the information; guilty as charged in the sixth count of the information; guilty as charged in the seventh count of the information, and guilty as charged in the eighth count of the information.

"Dated: Los Angeles, Calif., February 11, 1947.

"Ivan W. Newport

Foreman of the jury."

So say you all, ladies and gentlemen?

(Assent.)

The Court: Does either side wish to have the jury polled?

Mr. Strong: No, your Honor. [708]

Mr. Carr: No, your Honor.

The Court: Ladies and gentlemen of the jury, you will be excused from further consideration of this case, and you will be notified by the clerk of the court when you shall appear for further jury duty. You may be excused.

(Jury excused at 4:36 o'clock p.m.)

The Court: What is the bail in this case, gentlemen?

Mr. Carr: There is no bail at the moment, your Honor. And I should like to ask that be continued. This man is a responsible business man and a lawyer at the bar. I see no possible suggestion that he would in any way leave the community. He has a substantial business. I should like for your Honor to continue that.

The Court: What is the position of the Government?

Mr. Strong: I have no objection to that, your Honor, at the present time.

The Court: It is the opinion of the court that this defendant in this case will hold himself amenable to all the orders of the court. I do not believe it is necessary to either remand him to the marshal or to require bail at this time.

You have 10 days to make the motions, Mr. Carr.

Mr. Carr: Your Honor, as a matter of fact, I have five days under that Rule 29 under that motion for acquittal, to renew that; and I believe the rule provides in the alternative [709] for a motion for a new trial, and under another rule motion for arrest of judgment.

I anticipate renewing that motion in written form. I trust your Honor will take that into consideration in setting the time.

I might suggest this to your Honor: that I believe the case in Washington is to be decided—at least, there is some anticipation—about the 14th. Now, it may be a day or two or three or four days; it may be shortly thereafter. So I wondered if your Honor wanted to wait and see what happens in that case? That involves this whole rationing setup, you know, and also Mr. Christensen's case

is up in the Circuit Court and he has raised this question on which I made my offer of proof. That will come up sometime in the near future, I take it.

Mr. Strong: Well, the only thing is, I submit, your Honor, there are constantly cases coming up involving problems; and I don't think that sentences should be held in abeyance pending the solution of all problems involved.

The Court: The court will hear any and all motions that might be filed under the rules in this court on Tuesday, February the 18th, at 10:00 a.m.

Mr. Carr: The 18th, your Honor?

The Court: Yes, the 18th of February.

Court will now be in recess.

(Whereupon, at 4:40 o'clock p.m., February 11, 1947, [710] the hearing in the above-entitled matter closed.)

[Endorsed]: Filed May 27, 1947. [711]

[Endorsed]: No. 11555. United States Circuit Court of Appeals for the Ninth Circuit. Paul J. Ziegler, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed June 13, 1947.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11555

PAUL J. ZIEGLER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION AND ORDER EXTENDING TIME
FOR FILING AND DOCKETING

It Is Hereby Stipulated, by and between the parties hereto, through their respective Counsel, that Appellant may have to and including the 20th day of June, 1947, within which to file and docket the Record on Appeal in the above entitled matter, subject to Order of Court.

Dated: May 28, 1947.

CHARLES H. CARR

Attorney for Appellant Paul J. Ziegler

JAMES M. CARTER

U. S. Attorney

Attorney for Appellee, United States of America

It Is so Ordered:

FRANCIS A. GARRECHT

United States Circuit Judge

A true copy attest: May 29, 1947.

(Seal)

PAUL P. O'BRIEN,

Clerk.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT IN SUPPORT OF STIPULATION EXTENDING TIME FOR FILING AND DOCKETING RECORD ON APPEAL

State of California, County of Los Angeles—ss.

Charles H. Carr, being first duly sworn, deposes and says:

That he is the Attorney of record for the Appellant herein, Paul J. Ziegler;

That Notice of Appeal was filed by and on behalf of Appellant, Paul J. Ziegler, on February 25, 1947;

That the time within which to file and docket the Record on Appeal with the United States Circuit Court of Appeals for the Ninth Circuit in the above matter was, on the 17th day of March, 1947, extended by the United States District Court for the Southern District of California to and including the 1st day of June, 1947, and, on April 8, 1947, an Order was issued by the United States Circuit Court of Appeals for the Ninth Circuit extending the time within which to file and docket the Record on Appeal in this case to and including the 1st day of June, 1947;

That it was necessary for your affiant to be away from the city of Los Angeles on business for almost an entire month during April and May, 1947, which business required his presence in Detroit, Michigan, Washington, D. C., and New York City;

That on April 2, 1947, the associate in your affiant's office, who had assisted him in the trial of this case and who was attending to the procedural matters in connection with this appeal, was sworn in as a Municipal Judge

of the city of Los Angeles, namely, Judge Mildred L. Lillie; that the accession of Judge Lillie to the Municipal Court necessitated a reorganization of your affiant's office staff and the acquisition of other personnel;

That your affiant has been engaged in two complicated tax matters which have taken a considerable portion of his time in addition to his general practice;

That affiant also had to move his law office during the latter part of 1946 prior to the time when the quarters had been completed, and during the past few months your affiant has encountered the many difficulties attendant to setting up a new office;

That the trial in this case consumed six (6) full days, and the transcript of the proceedings consists of five (5) volumes; that there were also approximately fifty (50) exhibits, some of which are voluminous;

That it was necessary for your affiant to read and check the transcript of testimony before filing the same with the Clerk of the District Court, and your affiant was unable to finish the reading and checking of the transcript prior to May 27, 1947;

That under Rule 75, subdivisions (a) and (b), Federal Rules of Civil Procedure, appellant is required to serve upon the appellee and file with the district court a designation of the portions of the record to be contained in the record on appeal, and at that time appellant is required to file with his designation two copies of the reporter's transcript; that your affiant has been unable to do this by reason of the foregoing and the remaining time between now and June 1, 1947, the last day as extended within which to file and docket the record on appeal, is insufficient to permit the Clerk of the United States District Court for

the Southern District of California to prepare and certify the record for filing with the United States Circuit Court of Appeals for the Ninth Circuit;

That your affiant does not anticipate that any further extension of time within which to file and docket the Record on Appeal in this case will be necessary;

That the United States District Court for the Southern District of California has, on the 28th day of May, 1947, issued an order extending the time within which to file and docket the Record on Appeal in this case to and including the 20th day of June, 1947; however, your affiant believes that there may be some question that the District Court has jurisdiction to so extend the time for the filing and docketing of the Record on Appeal under Rule 73(g) of the Federal Rules of Civil Procedure and Rule 39(c) of the Federal Rules of Criminal Procedure, and, in an abundance of caution, seeks an order from the Circuit Court.

Wherefore, affiant prays for an extension of time to and including the 20th day of June, 1947, within which to file and docket the Record on Appeal.

CHARLES H. CARR

Attorney for Appellant, Paul J. Ziegler

Subscribed and sworn to before me this 28th day of May, 1947.

(Seal)

FAE BLOCK

Notary Public in and for said County and State

[Endorsed]: Filed May 29, 1947. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Appellant, Paul J. Ziegler, herewith sets forth a concise statement of the points on which he intends to rely on this appeal, viz.:

I.

The District Court erred in admitting into evidence Exhibits 3, 4, 5, 6, 40, 41, 42, 43 and 44.

II.

The District Court erred in permitting the witness, Albert F. Leland, to read the contents of a copy of a telegram, Exhibit 11, for identification.

III.

The District Court erred in admitting the testimony of the witness, Kenneth E. Pool, Inspector of the State Department of Public Health, relating to finding contaminated nut meats at the West Coast Supply Company; his discussion with the Appellant, Paul J. Ziegler, and also his testimony relative to a conversation with the Appellant, Paul J. Ziegler, concerning sanitary conditions at his plant.

IV.

The District Court erred in admitting the testimony of the witnesses, Stephen D. Ramseur and Benjamin H. Tingle, Investigators for the Alcohol Tax Unit (although later stricken).

V.

The District Court erred in admitting the testimony of the witnesses, Lomax Young and Charles E. Gould, Agents of the Office of Price Administration, relating to conversations with Allan Ziegler concerning Appellant, Paul J. Ziegler.

VI.

The District Court erred in admitting the testimony of Thaddeus R. Loud, Agent of the Office of Price Administration, concerning alleged conversation with Appellant, Paul J. Ziegler, in February, 1946.

VII.

The District Court erred in denying the motion of Appellant, under Rule 29 of the Rules of Criminal Procedure, for the Court to enter a judgment of acquittal on each and every count of the Information.

VIII.

The District Court erred in permitting the Assistant United States Attorney to call upon Appellant, while he was on the witness stand, to produce private papers and in compelling Appellant to produce as evidence his private papers, to wit: Exhibits 40, 41, 42, 43 and 44.

IX.

The District Court erred in permitting the Assistant United States Attorney to cross examine Appellant concerning previous transactions of his relating to the purchases of sugar.

X.

The District Court erred in commenting and in permitting the Assistant United States Attorney to comment concerning Appellant's privilege against self-incrimination while Appellant was on the witness stand.

XI.

The District Court erred in refusing to admit the expert testimony of the witness, John B. Schneider, relating to the available supply of sugar.

XII.

The District Court erred in giving Government's requested instructions 2, 3, 4, 6C, 7, 8, 11 and 12.

XIII.

The District Court erred in refusing to give Appellant's requested Instructions 16, 18, 20, 21, 22, 26, 27, 34, 35, 36, 37 and 39.

XIV.

The District Court erred in allowing the Assistant United States Attorney to improperly argue the case to the jury.

CHARLES H. CARR

Attorney for Appellant

Received copy of the within Statement of Points on Which Appellant Intends to Rely on Appeal this 20th day of June, 1947. William Strong for James M. Carter, U. S. Attorney, Attorney for Appellee, United States of America.

[Endorsed]: Filed Jun. 23, 1947. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION FOR ORDER OF COURT TO
CONSIDER ORIGINAL EXHIBITS

Comes now Paul J. Ziegler, Defendant and Appellant above named, by and through his attorney, Charles H. Carr, and makes application to this Honorable Court as follows:

That this Honorable Court consider as a part of the Record on Appeal all original Exhibits in the above-named action which have been transmitted by the Clerk of the U. S. District Court for the Southern District of California to the Clerk of the U. S. Circuit Court of Appeals for the Ninth Circuit and which have not been made a part of the printed record.

This application is being made upon the ground that a number of the original Exhibits are so long that it would be impractical and costly to include them all in the printed record.

Dated: June 23, 1947.

Respectfully submitted,
CHARLES H. CARR
Attorney for Defendant and Appellant

[Title of District Court and Cause]

ORDER OF COURT TO CONSIDER ORIGINAL
EXHIBITS

It Appearing that Paul J. Ziegler, Defendant and Appellant above named, has filed Notice of Appeal in the above matter and is now in the process of perfecting said Appeal;

It Also Appearing that Counsel for Appellee on the 2d day of June, 1947, has consented with Attorney for Appellant herein that all the original Exhibits be forwarded by the Clerk of the U. S. District Court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit;

It Further Appearing to the Court that on the 2d day of June, 1947, the Honorable J. F. T. O'Connor, U. S. District Judge for the Southern District of California, signed an order for transmission of all original Exhibits to the Ninth Circuit Court of Appeals;

It Is Ordered that all of the original Exhibits in the above action may be made a part of the Record on Appeal in the above-entitled matter to be considered by this Honorable Court in the within Appeal in their original form, as transmitted by the Clerk of the U. S. District Court, save and except those Exhibits which have been designated and made a part of the printed Record on Appeal.

Dated: This 25th day of June, 1947.

FRANCIS A. GARRECHT

Judge, U. S. Circuit Court of Appeals for the Ninth Circuit.

Received the within Application and Order of Court to Consider Original Exhibits this 23rd day of June, 1947. James M. Carter, United States Attorney for the Southern District of California; by William Strong, Assistant U. S. Attorney.

[Endorsed]: Filed Jun. 25, 1947. Paul P. O'Brien, Clerk.